Before the
Federal Communications Commission
Washington, D. C. 20554

In the Matter of	)	
	)	
Application of Qwest Communications International,	)	
Inc., for Authorization to Provide In-Region,	)	WC Docket 02-189
InterLATA Services	)	
in the States of Montana, Utah,	)	
Washington and Wyoming	)	

Comments of the Wyoming Public Service Commission
(Issued August 1, 2002)

The Wyoming Public Service Commission (Wyoming PSC) has completed its inquiry into the extent to which Qwest Communications International, Inc. (Qwest) is in compliance with the requirements of Subsection 271(c) of the federal Telecommunications Act of 1996 (the federal Act) for the purpose of facilitating a determination by the Federal Communications Commission (Commission) on whether Qwest should be granted authority to provide in-region, interLATA services in Wyoming under Section 271(d)(3) of the federal Act. Qwest applied to the Commission on July 12, 2002, for authority to provide in-region, interLATA services (the Application). Our information and comments are presented to the Commission under Section 271(d)(2)(B) of the federal Act.

Summary of Wyoming PSC Activity: Conclusions and Proceedings

1. With the exception of Qwest's Wyoming Performance Assurance Plan (QPAP), as discussed below, we are of the opinion that Qwest has met the requirements for obtaining authority to provide in-region, interLATA services in Wyoming. Our determinations on specific elements of Qwest's performance and compliance follow.

2. The process of examining Qwest's performance included [i] our participation in a multi-state Section 271 process with the States of Idaho, Iowa, Montana, New Mexico, North Dakota, and Utah which included a detailed workshop process which yielded a series of reports

on various compliance issues, authored by Liberty Consulting, Inc., and commission staff members from each of the participating states; [ii] a series of hearings specific to Wyoming on the legal and other aspects of each phase of the multi-state process; [iii] Wyoming-specific hearings to cover relevant issues not otherwise raised in the process; [iv] participation in the Regional Oversight Committee's (ROC) independent third party testing of Qwest's Operations Support System (OSS); and [v] a separately-docketed proceeding which established total element long run incremental cost (TELRIC) compliant prices for interconnection, collocation and unbundled network elements (UNEs), in addition to the required wholesale discount percentages applicable in Wyoming. The entire process included examination of Qwest's Statement of Generally Available Terms to be offered in Wyoming (the SGAT) and all of the Exhibits thereto.

The Organization of this Written Consultation

3. For the convenience of the Commission in reviewing the Wyoming PSC's findings and at its request, the topics below are identified and discussed in order primarily as they are organized in Appendix C to the Commission's Memorandum Opinion and Order adopted and released on June 24, 2002, *In the Matter of Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Jersey*, WC Docket No. 02-67 (the Verizon New Jersey Order).

4. The Wyoming proceedings regarding Qwest's Section 271 compliance were carried out in Wyoming PSC Docket No. 70000-TA-00-599. Attached and made a part hereof by reference are the following orders of the Wyoming PSC entered in that proceeding:

a. Order on "Paper Workshop" Checklist Items, issued June 25, 2001, dealing with competitive checklist items 3, 7, 8, 9, 10 and 12 (the Paper Workshop Order, Attachment A hereto);

b. Order on Group 2 Checklist Items, issued December 4, 2001, dealing with competitive checklist items 1, 11, 13, and 14 (the Group 2 Order, Attachment B hereto);

c. First Order on Group 5A Issues, issued January 30, 2002, dealing with the QPAP and public interest issues (the First QPAP Order, Attachment C hereto);

d. Order Denying Petition for Reconsideration and Setting Public Hearing and Procedure, issued March 27, 2002, including further discussion of Qwest's non-conforming QPAP and the reasons for rejecting its unilateral "compromise" draft (the Second QPAP Order, Attachment D hereto);

e. Order on Group 3 Workshop Items: Emerging Services, issued April 3, 2002 (the Group 3 Order, Attachment E hereto);

f. Order on Group 4 Workshop Items: Unbundled Network Elements, issued April 12, 2002, dealing with competitive checklist items 2, 4, 5, and 6 (the Group 4 Order, Attachment F hereto).

g. Order on AT&T Motion to Reopen Proceedings, issued June 18, 2002, dealing with the "unfiled agreements" issue (the AT&T Motion Order, Attachment G hereto);

h. Order on Group 5 Workshop Items: Section 272, Track A and General SGAT Terms and Conditions, issued June 19, 2002 (the Group 5 Order, Attachment H hereto);

i. Order on Consideration of General Compliance, issued on July 3, 2002, dealing with all aspects of the Commission's Section 271 inquiry, and including observations about TELRIC pricing and final consideration of the ROC independent third party testing of Qwest's OSS, the Change Management Process (CMP), and the Performance Measures Audit and Data Reconciliation (collectively, the PMA) (the Compliance Order, Attachment I hereto); and

j. Order on SGAT Compliance, issued July 9, 2002, giving final consideration to SGAT issues and discussing Qwest's non-compliant QPAP (the SGAT Order, Attachment J hereto).

Discussion of Wyoming PSC Findings

I. STATUTORY FRAMEWORK

5. Under the federal Act, the Commission must consult with the Wyoming PSC to verify that Qwest has one or more state-approved interconnection agreements with a facilities-based competitor, or an SGAT, and that either the agreements or SGAT satisfy the competitive checklist set forth at 47 U.S.C. § 271(c)(2)(B). We have found that, with the exception of Exhibit K thereto (the QPAP), discussed below, Qwest's SGAT complies with the requirements of the federal Act. See, Compliance Order, ¶¶49-50; SGAT Order, ¶10, and that Order, *passim*. The requisite approved interconnection agreements exist in Wyoming. See, Compliance Order, ¶31 and Track A discussion below.

6. To gain approval for its Application, Qwest must demonstrate that, with respect to Wyoming, [i] it satisfies the requirements of either section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B); [ii] it has fully implemented the competitive checklist in 47 U.S.C. § 271(c)(2)(B); [iii] the requested authorization will be carried out in accordance with the requirements of section 272; and [iv] Qwest's entry into the in-region, interLATA market is "consistent with the public interest, convenience, and necessity." As discussed below, Qwest has, with the exception of its offered Wyoming QPAP, met these statutory tests and has made the necessary demonstrations.

II. PROCEDURAL AND ANALYTICAL FRAMEWORK

A. Performance Data

7. Performance measurements provide valuable evidence of Qwest's compliance or noncompliance with individual checklist items. The Commission's criteria, set forth in the Verizon New Jersey Order, Appendix C, ¶7, are that Qwest should:

> (a) provide sufficient performance data to support its contention that the statutory requirements are satisfied;
>
> (b) identify the facial disparities between the applicant's performance for itself and its performance for competitors;
>
> (c) explain why those facial disparities are anomalous, caused by forces beyond the applicant's control (e.g., competing carrier-caused errors), or have no meaningful adverse impact on a competing carrier's ability to obtain and serve customers; and

(d) provide the underlying data, analysis, and methodologies necessary to enable the Commission and commenters meaningfully to evaluate and contest the validity of the applicant's explanations for performance disparities, including, for example, carrier specific carrier-to-carrier performance data.

Qwest has, in the opinion of the Wyoming PSC, provided performance indicator definitions (PIDs) which accurately, thoroughly and correctly describe Qwest's performance in competitive local exchange markets, and which have been shown through rigorous testing and auditing to be acceptably accurate. Qwest meets all of the listed criteria. See, Compliance Order ¶¶19-20. We emphasize that this does not remove the requirement for long-term Wyoming and regional PID administration to reflect the dynamism of the telecommunications markets involved. The quality of Qwest's performance has been tested and found acceptable through the ROC OSS testing process, the Performance Measures Audit and the Data Reconciliation with respect thereto. See, Compliance Order, ¶20. The parity and benchmark standards constituting the PIDs in this case meet the criteria described in the Commission's Verizon New Jersey Order, Appendix C, ¶¶8-9. See also the discussion of the ROC OSS testing procedure and results in the Compliance Order, ¶¶24-30.

II. PROCEDURAL AND ANALYTICAL FRAMEWORK
B. Relevance of Previous Section 271 Approvals

8. In the Verizon New Jersey Order, Appendix C, ¶11, the Commission stated that low volumes of data would not be determinative of a company's performance and that "volumes may be so low as to render the performance data inconsistent and inconclusive." Low data volumes might make it impossible to accord any probative weight to some performance data, requiring the Commission to rely on data from other applications. Early in the process of evaluating Qwest's compliance, the Wyoming PSC recognized this situation. Wyoming's markets are the smallest of any in the fourteen states in which Qwest provides local exchange service. We therefore decided to take part in the 13-state ROC OSS testing process which has provided for excellent and statistically significant sampling and analysis of performance data, including Wyoming data, on a uniform basis. Data from Wyoming and the other multi-state process participants showed a high level of uniformity and trustworthiness. The ROC OSS test, coupled with the rigorous identification and discussion of issues in the multi-state process and Wyoming-specific proceedings, have given us a thorough view of Qwest's performance. While the Commission has stated, Verizon New Jersey Order, ¶13, that findings from prior Section 271

orders would not be dispositive and that an analysis must be made individually for every state, the Commission's consideration of "all relevant evidence" will show that the Wyoming analysis is thorough and reliable.

III. Compliance with Entry Requirements – Sections 271(c)(1)(A) & 271(c)(1)(B)

9. In the Compliance Order at ¶31, we reaffirmed our finding that, for Wyoming, Qwest met the Track A requirement and the four-pronged test used by the Commission under Section 271(c)(1)(A). See also, Group 5 Order, ¶¶9-13.

IV. Compliance with the Competitive Checklist – Section 271(c)(2)(B)
A. Checklist Item 1 – Interconnection

10. We find Qwest compliant with the interconnection and collocation requirements of 47 U.S.C. § 271(c)(2)(B)(i). See, Compliance Order, ¶35a; and Group 2 Order, ¶¶5-16 (Interconnection) and ¶¶17-27 (Collocation).

IV. B. Checklist Item 2 – Unbundled Network Elements
1. Access to Operations Support Systems, including:
- **a. Relevance of a BOC's Prior Section 271 Orders**
- **b. Pre-Ordering and Access to Loop Qualification Information**
- **c. Ordering**
- **d. Provisioning**
- **e. Maintenance and Repair**
- **f. Billing**
- **g. Change Management Process**

11. We find Qwest compliant with the requirements of 47 U.S.C. § 271(c)(2)(B)(ii) and the various UNE-related issues a through g. See, Compliance Order, ¶¶35b, 24-30 (ROC OSS testing), and ¶¶36-39 (the Change Management Process). See also, SGAT Order, ¶8. The ROC OSS testing provided a comprehensive review of Qwest's capabilities, and the Wyoming PSC placed no reliance on other Section 271 orders concerning Qwest.

IV. B. Checklist Item 2 – Unbundled Network Elements
2. UNE Combinations

12. We find Qwest compliant. See the Wyoming orders cited above in paragraph 11, regarding the results of the ROC OSS testing, and the final form of the Qwest SGAT. TELRIC-

compliant pricing for UNE combinations in Wyoming was established in our Docket No. 70000-TA-01-700. See, SGAT Order, ¶¶4-6; Compliance Order, ¶18; and Group 4 Order, ¶¶4 and 10. In Exhibit A, Wyoming Rates, to the Wyoming SGAT filed by Qwest with its Application to the Commission, footnote 1 identifies certain rates as "Rates not addressed in Docket No. 70000-TA-01-700." The Wyoming PSC therefore expresses no opinion about the TELRIC compliance of these rates.

IV. B. Checklist Item 2 – Unbundled Network Elements
3. Pricing of Network Elements

13. We find Qwest compliant. See, SGAT Order, ¶¶4-6. TELRIC-compliant pricing for network elements in Wyoming was established in our Docket No. 70000-TA-01-700. See also, Compliance Order, ¶18. In Exhibit A, Wyoming Rates, to the Wyoming SGAT filed by Qwest with its Application to the Commission, footnote 1 identifies certain rates as "Rates not addressed in Docket No. 70000-TA-01-700." The Wyoming PSC therefore expresses no opinion about the TELRIC compliance of these rates.

IV. B. Checklist Item 2 – Unbundled Network Elements
Other

14. Qwest makes adequate provision for dark fiber (an Emerging Service) in Wyoming as discussed in the Commission's November 5, 1999, UNE Remand Order. See, Compliance Order, ¶34; and Group 3 Order, ¶¶8-10.

IV. C. Checklist Item 3 – Poles, Ducts, Conduits and Rights of Way

15. We find that Qwest meets the requirements of 47 U.S.C. § 271(c)(2)(B)(iii) regarding access to poles, ducts, conduits, and rights-of-way. See, Compliance Order, ¶35c; and Paper Workshop Order, ¶¶9-9c.

IV. D. Checklist Item 4 – Unbundled Local Loops

16. We find that Qwest meets the requirements of 47 U.S.C. § 271(c)(2)(B)(iv) regarding unbundled local loops. See, Compliance Order, ¶35d. It provides adequately for line sharing (an Emerging Service) as discussed in the Commission's December 9, 1999, Line Sharing Order. It also makes adequate provision for subloop unbundling (an Emerging Service)

in Wyoming as discussed in the Commission's November 5, 1999, UNE Remand Order. See, Compliance Order, ¶34; Group 4 Order, ¶¶5 and 10; and Group 3 Order, ¶¶4-5 and 10 (Line Sharing and Subloop Unbundling).

IV. E. Checklist Item 5 – Unbundled Local Transport

17. We find that Qwest meets the requirements of 47 U.S.C. § 271(c)(2)(B)(v) regarding unbundled local transport. See, Compliance Order, ¶35e; and Group 4 Order, ¶¶6 and 10.

IV. F. Checklist Item 6 – Unbundled Local Switching

18. We find that Qwest meets the requirements of 47 U.S.C. § 271(c)(2)(B)(vi) regarding unbundled local switching. See, Compliance Order, ¶35f. The pseudo-CLEC experience in the ROC OSS testing procedure shows compliance throughout. It also makes adequate provision for packet switching (an Emerging Service) in Wyoming as discussed in the Commission's November 5, 1999, UNE Remand Order. See, Compliance Order, ¶34. See also, Group 4 Order, ¶¶7 and 10; and Group 3 Order, ¶¶7 and 10 (Packet Switching).

IV. G. Checklist Item 7 – 911/E911 Access and Directory Assistance/Operator Services

19. We find that Qwest meets the requirements of 47 U.S.C. § 271(c)(2)(B)(vii) regarding 911 and E911, directory assistance, and operator services. See, Compliance Order, ¶35g; and Paper Workshop Order, ¶¶10-10d. Verification was provided by the ROC OSS testing process.

IV. H. Checklist Item 8 – White Pages Directory Listings

20. We find that Qwest meets the requirements of 47 U.S.C. § 271(c)(2)(B)(viii) regarding white pages directory listings. See, Compliance Order, ¶35h; and Paper Workshop Order, ¶¶11-11b.

IV. I. Checklist Item 9 – Numbering Administration

21. All of our conditions have been met, and Qwest satisfies this checklist item. See, 47 U.S.C. § 271(c)(2)(B)(ix); Compliance Order, ¶35i; and Paper Workshop Order, ¶¶12-12a.

IV. J. Checklist Item 10 – Databases and Associated Signaling

22. Qwest has met all conditions, and it satisfies this checklist item. See, 47 U.S.C. § 271(c)(2)(B)(x); Compliance Order, ¶35j; and Paper Workshop Order, ¶13.

IV. K. Checklist Item 11 – Number Portability

23. Qwest has met all conditions, and it satisfies this checklist item. See, 47 U.S.C. § 271(c)(2)(B)(xi); Compliance Order, ¶35k; and Group 2 Order, ¶¶28-34.

IV. L. Checklist Item 12 – Local Dialing Parity

24. Qwest has met all conditions, and it satisfies this checklist item. See, 47 U.S.C. § 271(c)(2)(B)(xii); and Compliance Order, ¶35l. See also, the Paper Workshop Order, ¶14.

IV. M. Checklist Item 13 – Reciprocal Compensation

25. Qwest has met all conditions, and it satisfies this checklist item. See, 47 U.S.C. § 271(c)(2)(B)(xiii); and Compliance Order, ¶35m. See also, Group 2 Order, ¶¶35-39.

IV. N. Checklist Item 14 – Resale

26. Qwest has met all conditions, and it satisfies this checklist item. See, 47 U.S.C. § 271(c)(2)(B)(xiv); and Compliance Order, ¶35n. See also, Group 2 Order, ¶¶40-42.

27. Overall, Qwest complies in Wyoming with the competitive checklist requirements of the federal Act. Specifically, Qwest's performance in implementing the checklist satisfies the tests described by the Commission in the Verizon New Jersey Order, Appendix C, ¶5. Qwest offers interconnection and access to network elements on a nondiscriminatory basis. For those functions Qwest provides to competitors that are analogous to the functions it provides itself in connection with its own retail service offerings, Qwest provides access to competing carriers in "substantially the same time and manner" (i.e., equally) as it provides to itself. Where there is no retail analogue, Qwest provides access to competing carriers that offer an efficient carrier a "meaningful opportunity to compete." See, Compliance Order and SGAT Order, *passim*.

V. Compliance with Separate Affiliate Requirements – Section 272

28. Qwest complies with the separate affiliate requirements of 47 U.S.C. §§ 272(b) and (c). The entity to be employed by Qwest in that regard is Qwest Communications Corp. See, Compliance Order, ¶32; and Group 5 Order, ¶¶ 5-8.

VI. Compliance with the Public Interest – Section 271(d)(3)(C) Generally

29. Under 47 U.S.C. § 271(d)(3)(C), we must find that Qwest's ". . . requested authorization is consistent with the public interest, convenience, and necessity." We undertook this, in part, as a general review of all of the facts and circumstances in the case apart from, and in addition to, our analyses of the SGAT, the QPAP, Qwest's success in ROC OSS testing, the existence of adequate PIDs, issues deferred to the TELRIC case and other individual considerations. We noted that failure in one of these issue areas would prevent a finding that Qwest satisfied the public interest in this general sense, but that satisfaction of these individual issues would not be conclusive. In our First QPAP Order, at ordering ¶2, we conditionally found general public interest compliance, stating that:

> "Conditioned on the development of a conforming QPAP, proper PIDs and the successful completion of the ROC OSS test, the Commission recommends that Qwest has satisfied the general public interest criteria as described hereinabove."

In the Compliance Order, ¶32, we concluded that Qwest met the generalized public interest test, as more fully described in the First QPAP Order, "contingent on filing a conforming QPAP," noting that the public interest aspects of pricing were settled in our TELRIC case.

VI. Compliance with the Public Interest – Section 271(d)(3)(C) The Non-Compliant QPAP

30. The only serious area of non-compliance, in the Wyoming PSC's view, is Qwest's proposed Wyoming QPAP. Understood in the context of Wyoming's local service markets and the relatively small local exchange carriers competing with Qwest in Wyoming, Qwest's QPAP, as filed with the Commission and previously repeatedly disapproved by the Wyoming PSC, fails in several critical aspects to serve its intended purpose. See, Compliance Order, ¶¶41-48; SGAT Order, ¶9; First QPAP Order, *passim*; and Second QPAP Order, *passim*.

31. In approving the Incentive Plan (IP) in the Verizon New Jersey Order, the Commission stressed that the plan would provide ". . . assurance that the local market will remain open after Verizon receives section 271 authorization." The Commission found that the plan [i] falls within a "zone of reasonableness" and [ii] is likely to provide incentives "sufficient to foster post-entry checklist compliance." Although it is not a requirement for section 271 authority, the Commission stated that: ". . . the existence of a satisfactory performance monitoring and enforcement mechanism would be probative evidence that the BOC will continue to meet its section 271 obligations after a grant of such authority. The IP, *in combination with the New Jersey Board's active oversight of the IP and its stated intent to undertake a comprehensive review to determine whether modifications are necessary,* provides additional assurance the local market will remain open." Verizon New Jersey Order, ¶176. [Emphasis added.]

32. Qwest's finally proposed QPAP contains critical elements which do not conform to the public interest standard described in the preceding paragraph. The Wyoming PSC rejected it as non-compliant for several reasons:

a. Limit on Annual Liability -- Cap on Tier 1 and Tier 2 Payments (QPAP Section 12). Qwest proposes an unfair, complex and administratively burdensome cap on its liability under the QPAP, compounding the problem by offering new language which seeks to do away with the Wyoming PSC's ability to review this complex cap except when it is agreeable to Qwest (QPAP Section 12.2). The Wyoming PSC would only be allowed to open a proceeding to "request" that Qwest explain its non-conforming performance in extreme circumstances, i.e., after Qwest reaches the cap for two consecutive years or when it pays out a third of the cap "in two consecutive months." Any increase in the cap is limited by the QPAP. This mechanism provides an incentive for protracted lapses in conforming behavior and not an incentive for compliance. The competitors Qwest is likely to face in Wyoming could find it challenging even to survive until sufficiently protracted bad behavior triggered the weak "remedy" envisioned by Qwest's proposal.

b. Limitation of remedies (QPAP Section 13.6). This QPAP provision seeks to abrogate Wyoming PSC statutory authority to promulgate and enforce quality of service rules under the Wyoming Telecommunications Act of 1995. This remains an unacceptable contractual limitation of public policy. QPAP Section 13.6.2 provides a narrowly available and complicated process to delay or block a CLEC's access to federal court by forcing it to pass a QPAP test and getting "permission" to go to federal court. Frivolous suits can be adequately weeded out by the federal courts without the "helpful" limitations of the QPAP. This further watering down of the QPAP remains unacceptable to the Wyoming PSC.

c. Six-Month (and other) Reviews (QPAP Section 16.1). In the Compliance Order, ¶45, we directed inclusion of language to clarify the Wyoming PSC's retention of a public interest oversight role over the QPAP. Qwest refused to place a simple and unconditional statement to this effect in its QPAP. It thereby invites expensive litigation and burdensome administrative proceedings by including the ambiguous phrase "consistent with any independent authority under law" in the description of the Wyoming PSC's involvement in ordering changes in the QPAP. It seeks to insulate Qwest going forward from meaningful scrutiny of the QPAP and is merely asserted without factual or legal analysis, implying that our misgivings about the unjustifiable expense and delay it creates are well founded. This also poses problems not entirely shared by other states. As we stated in the SGAT Order, ¶9:

> "Remembering that Wyoming competitors are generally small and are dealing with relatively small markets, this much delay of the correction under the QPAP of an abuse by Qwest might easily suffice to silence the would-be competitor and end the matter without any consideration of the public interest. In our July 3, 2002, order, we directed a simple and unequivocal statement of the Commission's continuing role in the process clarifying that any entity may come to the Commission for resolution at any time if a serious problem arises. This was not done and this section is unacceptable."

Compounding the problem, QPAP Section 16.1 provides that: "Any changes made in the six-month review pursuant to this section shall apply to and modify this agreement between Qwest and CLEC." This implies that changes made at other times pursuant to a Wyoming PSC mandate might *not* modify "this agreement." This introduces further limitations and ambiguities which favor the larger and more durable entity and which increase delay and expense for other parties. These provisions frustrate the "active oversight" and "comprehensive review" criteria which the Commission found important in approving the New Jersey IP.

d. "Sticky duration" of Tier 1 payment levels (QPAP Section 6.2.1). The amount of a payment for nonconforming behavior by Qwest should stay at the level to which it escalated prior to Qwest's cure. This would clearly identify the level at which actual compliance occurred without resort to litigation, hearings or further tinkering with the QPAP. In the First QPAP Order, ¶10, we found that:

> "The actual reward for good behavior should be not having to make payments under the QPAP because Qwest's performance complies with it. The idea of encouraging good behavior and then lessening the payment for bad behavior as a reward for an interim period of good behavior is a perverse incentive. We therefore decide that escalated penalties should be "sticky." That is, once a payment has escalated to a level at which Qwest complies with a provision of the QPAP, that particular payment should remain at that level. Again, compliance should be rewarded and this is the better way to encourage this behavior. The QPAP should not lend itself to a "cost-benefit" analysis under which the price of noncompliance might be weighed and found by Qwest to be an acceptable cost of doing business."

Qwest's offered section 6.2.1 remains non-conforming; and we noted the irony in this situation as ". . . largely a theoretical matter in Wyoming. Qwest's performance has been improving constantly and is at a very respectably high level of quality." Compliance Order, ¶46.

e. Limits on the escalation of Tier 1 payments (QPAP Section 16.1.2). We directed that there be no limits on the escalation of Tier 1 payments, and Qwest agreed generally but carved out an exception for three billing measurements (BI-1, BI-3 and BI-4), arguing that would create "the potential for exceptionally harsh and unfair payment requirements." Compliance Order, ¶43. The Wyoming PSC's point in remaining involved in the QPAP and SGAT administration was to ensure that these documents remain "living" and continue to carry out the policies of the federal Act (as well as the similar policies of the Wyoming Telecommunications Act of 1995) to encourage the growth of healthy, competitive local exchange markets in a dynamic environment. The QPAP should not be allowed to become either a profit center for competitive local exchange carriers or a tool for abuse of Qwest's competitors. Neither Qwest nor its competitors should be insulated by the document from the discipline of the marketplace. Qwest failed to show any relevant evidence that these three billing measurements should be capped. The QPAP offered to the Commission is deficient in this respect.

33. The Wyoming PSC's commitment to the process will help the QPAP work as envisioned by the Commission's policy statement noted above and in a responsive and timely manner. The Wyoming experience is different from the experience of other states, as we

discussed in the First QPAP Order, the Compliance Order and the SGAT Order. We summarized the essence of this commitment in the Compliance Order, ¶42:

> "Regarding the concept of capping Qwest's annual liability under the QPAP, we have said that there should not, at the outset, be such a cap. The dynamics of Wyoming's telecommunications industry and its unique competitive conditions (including among the highest cost of serving and its small, relatively widely spaced markets) clearly show that the QPAP should not be capped at the outset. In our order of January 30, 2002, [the First QPAP Order] we stated that:
>
> > "For example, if it appears later that competitive local exchange carriers are abusing Qwest under the QPAP or that limits should, *in the light of actual Wyoming experience*, be placed on Qwest's potential obligations, this can be done at that later time. Review should be periodic and the six month interval suffices, but parties should be able to come before the Commission at any time if a serious problem arises. At once, this answers the question of whether Qwest should have to endure unbearable burdens under the QPAP and the question posed by the Consumer Advocate Staff regarding how to plan for a competitive future with so many unknowns and a lack of a Qwest track record on the subject."
>
> "By doing this, we have offered less protection than an unjustifiable and unsupported *absolute* cap might furnish, but we have offered considerably more than a simple procedural cap might provide. Under the QPAP as ordered, Qwest could come before the Commission at any time to present a case for capping its liability. It would not have to wait for an arbitrary dollar amount to be reached. It would only have to show that the QPAP was not operating in the public interest, e.g., that it had become a tool for abuse. Qwest's latest language does not provide for the simple and direct remedy we believe should be in place in Wyoming." [Emphasis original; editorial material supplied.]

The First QPAP Order and the Second QPAP Order provide a complete discussion of the Wyoming PSC's reasoning regarding the Wyoming QPAP, and we refer to them for additional support for the Wyoming PSC's position.

34. At ¶5 of the First QPAP Order, we discussed the Commission's "simple and logical set of criteria for evaluating the QPAP and similar plans on a rational and consistent basis." Those criteria include:

- Meaningful and significant incentive to comply with designated performance standards;

- Clearly articulated and predetermined measures and standards encompassing a range of carrier-to-carrier performance;
- Reasonable structure designed to detect and sanction poor performance when and if it occurs;
- A self executing mechanism that does not open the door unreasonably to litigation and appeal; and
- Reasonable assurance that the reported data are accurate.

We carefully applied the criteria to Qwest's situation in Wyoming and determined the form the QPAP should take to meet those criteria. We understand that, although Qwest argued protractedly to the contrary, the Commission's criteria do not require all incentive plans to be alike. Qwest repeatedly refused to address the majority of the problems identified in the Wyoming QPAP. At ¶10 of the SGAT Order, we found Qwest's Wyoming SGAT compliant with the federal Act, with the exception of the QPAP, as discussed above. We stated there that: "We leave to the FCC the decision of the form the Wyoming QPAP should take."

35. Qwest's Brief in support of its Application, at pp. 185-187, misidentifies the First QPAP Order as a "report" and mischaracterizes the Wyoming PSC position on limiting Qwest's liability. The Wyoming PSC remains ready to hear arguments based on facts that show a cap is warranted and what that cap should be, just as the Wyoming QPAP remains flawed with elements of ambiguity and delay favoring the established incumbent. We have reviewed the Declaration of Mark. S. Reynolds and the Declaration of Michael A. Ceballos filed by Qwest in support of its Application herein. Neither Declaration, in its discussion or conclusions about the Wyoming QPAP, presents a complete or accurate discussion of the Wyoming PSC's decisions or a balanced view of the result. An example of this mischaracterization is found in the Reynolds Declaration at ¶26, where he asserts, that ". . . there is no self-evident relationship (and the WPSC did not establish one) between a sparsely populated state and the need for a plan without an annual cap; . . . ." Qwest thus dismissively omits substantially all of the reasoning employed by the Wyoming PSC and appears to imply that the only reason the Wyoming PSC did not accept an annual liability cap is that Wyoming is a high-cost state with small markets. Our orders show otherwise. Even though a compliant QPAP is an important element of Qwest's demonstration of compliance with Section 271, Qwest also omits mention of the Commission's own statement that: "The BOC at all times bears the burden of proof of compliance with section

271, even if no party challenges its compliance with a particular requirement." Verizon New Jersey Order, Appendix C, ¶5. See also, Second QPAP Order, ¶¶5-9 and 13-16.

36. We refer the Commission to the Wyoming PSC orders attached to these Comments, and especially the First and Second QPAP Orders, for a complete discussion of the public interest facts and reasoning behind the Wyoming PSC's decision.

VI. Compliance with the Public Interest – Section 271(d)(3)(C) Unfiled Agreements

37. The Wyoming PSC was urged to delay the proceedings in Docket No. 70000-TA-00-599 to make a public interest investigation into the "unfiled" or so-called "secret" agreements between Qwest and certain telecommunications service providers. We declined to do so for several reasons:

a. no allegation of actual harm or wrongdoing in Wyoming was made;

b. the matter is now before the Commission for a generally applicable resolution of the question of what constitutes an interconnection agreement which must be filed with and approved by state commissions;

c. the question of harm to Wyoming is already before the Wyoming PSC in two other proceedings started at the request of AT&T Communications of the Mountain States, Inc.

As we stated: "There has been no evidence brought forward that any agreement unfiled in Wyoming or elsewhere has had any specific adverse effect on Wyoming." See, Compliance Order at ¶21; and AT&T Motion Order, *passim*. This subject is not an "exceptional circumstance" preventing approval of the Application; and the Wyoming PSC has found no other such circumstances.

Conclusion

38. We conclude that Qwest has in general met the criteria established in and under the federal Act required for approval by the Commission of Qwest's Application in the above-captioned proceeding as far as it concerns the offering by Qwest of in-region, interLATA service

in the Wyoming. The Wyoming PSC therefore recommends to the Commission that it decide the form the Wyoming QPAP should take, and thereupon approve Qwest's Application.

MADE and ENTERED at Cheyenne, Wyoming, on August 1, 2002.

PUBLIC SERVICE COMMISSION OF WYOMING

/s/ Steve Ellenbecker
STEVE ELLENBECKER, Chairman

/s/ Steve Furtney
STEVE FURTNEY, Deputy Chair

/s/ Kristin H. Lee
KRISTIN H. LEE, Commissioner

(SEAL)
Attest:

/s/ Stephen G., Oxley
STEPHEN G. OXLEY, Secretary and Chief Counsel

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION OF QWEST CORPORATION REGARDING RELIEF UNDER SECTION 271 OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996, WYOMING'S PARTICIPATION IN A MULTI-STATE SECTION 271 PROCESS, AND APPROVAL OF ITS STATEMENT OF GENERALLY AVAILABLE TERMS	)	Docket No. 70000-TA-00-599 (Record No. 5924)

ORDER ON "PAPER WORKSHOP" CHECKLIST ITEMS
(Issued June 25, 2001)

This matter is now before the Wyoming Public Service Commission (Commission) for consideration of written filings made concerning the "less controversial checklist items" no. 3, 7, 8, 9, 10, and 12, concerning Poles/Ducts/Conduits, 911/E911, Directory Assistance, Operator Services, White Pages Listings, Number Administration, Signaling and Associated Databases, and Dialing Parity. In this "paper workshop" (the Paper Workshop) we consider the degree to which Qwest Corporation (Qwest) has complied with the noted competitive Checklist Items found at Section 271 of the federal Telecommunications Act of 1996 (47 U.S.C. § 271(c)(2)(B)(iii), (vii), (viii), (ix), (x) and (xii). We also will determine how well Qwest's Statement of Generally Available Terms (SGAT) provides for the development of a competitive telecommunications market in Wyoming under Sections 251 and 252(d) and (f) of the federal Act. The Commission, having reviewed the material filed in the Paper Workshop, the Report thereon, applicable telecommunications utility law, and being otherwise fully advised in the premises, HEREBY FINDS AND CONCLUDES:

1. On August 11, 2000, the Commission entered its Procedural Order in the above-captioned proceeding in which it agreed that the Paper Workshop topics could be addressed through written filings and stated, at ordering paragraph 3, that:

> "To the extent that agreement cannot be reached on these checklist items, further workshops on specific topics may be scheduled or issues may be deferred to the Commission for resolution at the Commission's discretion."

2. On March 19, 2001, the consultant retained by the states participating in the Qwest Section 271 compliance proceeding (the Consultant), with the assistance of state commission staff members, issued his report on the Paper Workshop to the Commission (the Report). Parties interested in Wyoming, Qwest

and AT&T Communications of the Mountain States, Inc. (AT&T) filed comments on the report with the Commission on March 29, 2001. At that point, we considered the Paper Workshop record sufficiently developed that we could proceed with our consideration in a fair and orderly manner. Therefore, on April 4, 2001, we issued our Order Setting Oral Argument Regarding "Paper Workshop" Checklist Items, setting an oral argument for the morning of May 10, 2001, at our offices in Cheyenne, Wyoming. In paragraph 3 of that order, we cautioned parties that:

> "At the oral argument, any Wyoming party participating in the case may appear and should be prepared to make presentations to the Commission [i] on the advisability of adopting, modifying or rejecting the disposition of any issue as currently recommended to the Commission on the record, and [b] regarding any specific Wyoming-only "paper workshop" topics which the party suggests should come before the Commission for the presentation of any additional evidence of a Wyoming-specific nature that should be developed for a fully informed and fair decision in the public interest. Any party suggesting that further evidence of any kind should be taken must be prepared to show why the multi-state proceeding could not and did not address the issue adequately, including full discussion of any facts that could not have been known or presented at the time the record was being developed."

By our April 13, 2001, Amending Order Resetting Oral Argument on "Paper Workshop" Checklist Items, we reset the argument to begin on the afternoon of May 10, 2001. Therein, we reiterated the above admonishment to the parties.

3. On April 27, 2001, AT&T filed its Response to Amending Order Resetting Oral Argument on "Paper Workshop" Checklist Items, advising the Commission that it would not participate in the May 10, 2001, oral argument and suggesting, *inter alia*, that the Commission instead hold one single Wyoming hearing following the completion of all of the multi-state proceedings in the above-referenced case. Qwest responded to AT&T on April 30, 2001, arguing against a single "omnibus" hearing at the end of the multi-state process and proposing a schedule of procedural dates for consideration of issues on a workshop-by-workshop basis to keep the task of making a Wyoming-specific review more manageable and closer in time to the relevant multi-state proceedings.

4. On May 3, 2001, and pursuant to due notice, we heard the arguments of parties at the regular open meeting and issued our Order Canceling Oral Argument on "Paper Workshop" Checklist Items. Our decision was based on the facts, made clear at the open meeting, that Qwest was the only party intending to present an oral argument and that the record regarding the Paper Workshop Checklist Items was sufficiently developed for us to hold fully informed deliberations without oral presentations by Qwest on its written material.

5. We thereafter set the Paper Workshop deliberation for May 31, 2001; and held our deliberation that day at our hearing room in Cheyenne, Wyoming. The deliberations were held that day pursuant to due public notice; and we directed the preparation of this order consistent therewith.

6. The Report, at page 8, correctly identifies the two-part general standard applicable to Qwest's Section 271 as suggested by AT&T. The components are:

> a. "Qwest must demonstrate that it has a concrete and specific legal obligation to provide a checklist item consistently with the requirements of Sections 271, 251 and 252 of the Act. This burden may be met through approved interconnection agreements ("ICAs") or a statement of generally available terms ("SGAT")."
>
> b. "Second, it must be found that Qwest currently furnishes or is ready to furnish, the checklist item in quantities that competitors may reasonably demand and at an acceptable level of quality."

7. The Report also rightly observes that the above-captioned process will focus on both standards and not leave consideration of compliance issues to another proceeding as AT&T advocated. The workshop process can produce final decisions without further Wyoming-specific proceedings. The August 11, 2000, order through which we began participation in this proceeding made this clear from the outset:

> "The Commission's review will encompass each of the elements of Qwest Corporation's entry into the in-region interLATA market that the FCC must address under Section 271(d)(3) of the federal Act, including facts concerning Qwest Corporation's compliance specific to Wyoming."

In that order, we also stated that the multi-state workshop process should be taken seriously by participants:

> "The Commission expects the multi-state workshop process in which it joins to narrow and resolve many Section 271 issues. It is therefore important to have a robust and informed Wyoming presence and participation in the process. Therefore, the Commission strongly encourages full participation in this multi-state collaboration and in any necessary Wyoming-specific proceedings related thereto."

We also urged participants not to leave subjects out of the workshop process, hoping to save them for a later Wyoming proceeding:

> "Once an issue is considered to be in agreement during the workshop process, it will not be reopened unless new information or evidence, not previously available to the parties, justifies reopening the issue. Each Commission, including the Wyoming Public Service Commission, shall retain its independent authority to resolve each unresolved issue in a manner deemed appropriate. Any participating commission may therefore resolve any issue based on the record from the workshops, through the taking of additional evidence, some combination thereof or otherwise as it sees fit."

We reinforced this further at paragraph 16 of our November 8, 2000, Order Supplementing Procedural Schedule and Denying Requests for Further Procedural Modifications. We said that:

> "Parties thus should treat the workshop process very seriously and contribute seriously to its success because they may not rely on the Commission automatically holding additional Wyoming-specific proceedings. We will make further decisions later in our discretion and as we are informed by the facts available to us through the workshop process and any additional material brought regularly to our attention. Parties should prepare their workshop presentations knowing that they will bear a heavy burden in arguing for a Wyoming-specific hearing on matters they could have brought up at workshops just as parties will bear a similarly heavy burden in arguing against our specific consideration in a Wyoming proceeding of issues of specific concern to Wyoming consumers which could not be satisfactorily addressed or resolved at a workshop. We will decide this case on a fully developed record and we will take the steps necessary to be fully informed on all issues both generally and from a Wyoming perspective."

We have found no reason to deviate from this efficient and well balanced procedure. We will retain our flexibility to make the best decision for Wyoming, but those decisions will be made as efficiently possible. AT&T stated in its March 30, 2001, comments to the Commission on the Report that it understood that the workshop procedure would settle only common issues and that state-specific issues would be decided in separate proceedings in each state at the end of the workshop procedure. We clarify here that this understanding is incorrect. To the extent necessary, we will consider any state issues near the time of the conclusion of each relevant workshop; and parties will bear a heavy burden in showing the Commission why an issue on which it seeks a Wyoming hearing could not have been handled in the workshop process. The necessity of bringing issues to the workshop process was again emphasized in the Consultant's November 8, 2000, Ruling on Submission of State-Specific Information.

8. We emphasize, as the Report did, at pages 9-10, that parties have generally made presentations focused on details of the legal obligations of Qwest to furnish services under its SGAT rather than providing information about whether Qwest is providing services adequate in quality and quantity. The Report points out, at page 9, that:

> "All participants have been fully and repeatedly advised that information about the service that they have been getting from Qwest is relevant now, both in terms of the quantity and quality of that service. All that is being deferred is the ability to present evidence that relates to the findings and conclusions that result from the testing of Qwest's Operations Support Systems (OSS) and the auditing of its performance measurements."

At page 10, the Report continued, stating that:

> "CLECs have, despite the clear ruling on the scope of these workshops, indicated that they continue to reserve the right to bring their experiences before the individual commissions (for purposes beyond addressing the findings of the OSS testing), despite being made aware that the commissions may find such efforts untimely."

9. Checklist Item 3: Access to Poles, Ducts, Conduits and Rights of Way. This item, based on Section 271(c)(2)(B)(iii) of the federal Telecommunications Act of 1996, requires "nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of Section 224." Section 224(f)(1) requires that a "utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it."

9a. Upon review of the case, we accept the Report's finding that Qwest has generally complied with this Checklist Item. The Report described certain issues with respect to which Qwest should amend its SGAT to properly reflect its obligation to provide service under item 3. They are the definition of "ownership or control" of facilities, CLEC access to landowner agreements, curing CLEC breaches of landowner agreements, and large order response times. We find that Qwest's March 29, 2001, Comments to the Commission propose fair and reasonable resolution of these SGAT issues.

9b. We note specifically that, regarding landowner agreements, Qwest's solution provides a balance which protects the bargaining positions of Qwest and the landowners while giving CLECs the ability to determine for themselves the nature and extent of Qwest's rights. It allows relevant information to flow and assigns liability fairly to the person requesting information. We agree that Qwest's approach to establishing response times for its approval or denial of large orders submitted by CLECs for access to the facilities contained in Checklist Item 3 is the right one. It does not place a premium on any particular size of order, requires a response within a certain period of time (35 days) and provides a mechanism for obtaining extra time with respect to any request which may take an unusual amount of time to complete. Qwest adopted the Report's suggestion verbatim, and we agree that the general remedies available under the SGAT would be sufficient to allow a CLEC to complain if Qwest establishes a pattern of tardy or uncooperative behavior.

9c. Like all issues in this proceeding, Checklist Item 3 will remain subject to the completion of OSS testing and any necessary further consideration of the results thereof. However, the Regional Oversight Committee (ROC) has declined to establish performance measures (PM) for CLEC access to poles, ducts and rights-of-way and, as noted by Qwest, "no CLEC has challenged Qwest's performance in providing access." (Qwest March 29, 2001, Comments, p. 11.) In light of these considerations, we conclude that this issue is essentially at an end and that we will recommend to the Federal Communications Commission (FCC) that Qwest complies with this Checklist Item.

10. Checklist Item 7: 911/E911, Directory Assistance, Operator Services. The access or interconnection offered or provided by Qwest to other carriers, under Section 271(c)(2)(B)(vii) of the federal Act must include:

> "(vii) Nondiscriminatory access to--
> "(I) 911 and E911 services;
> "(II) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and
> "(III) operator call completion services."

10a. Checklist Item 7(I): 911 and E911 Services. Qwest must provide 911 and E911 services in the same manner it obtains access, or it must provide service at parity with its own. We accept the Report's conclusion that the points raised in the Paper Workshop were satisfactorily answered by Qwest and that Qwest provided sufficient, and unrebutted, evidence of its compliance with this Checklist Item. We agree that the timing issue of minimizing out-of-service conditions affecting the availability of 911/E911 service (specifically identified in the Report at page 34 as "Impacts of Number Porting on 911/E911 Services") should be considered in detail in Workshop 1.

10b. Checklist Item 7(II): Directory Assistance. In addition to the requirement of Section 271(c)(2)(B)(vii)(II) of the federal Act set forth above, Section 251(b)(3) of the federal Act requires that this access be given ". . . with no unreasonable dialing delays." We accept the Report's conclusion that Qwest has generally proven its compliance with this Checklist Item and that its answers to the inquiries of other parties, if adhered to in practice, are sufficient to support this conclusion. The remaining issue, concerning WorldCom's request for the bulk transfer to a CLEC of Qwest's CNAM data base, may either be considered as a call-related data base issue rather than a directory assistance issue or dropped altogether. We agree with the Report's conclusion that WorldCom did not make its case for a requirement that bulk transfer of Qwest's CNAM database should be considered an unbundled network element. WorldCom, or others, may address the issue in other appropriate proceedings if experience shows the need, but it is not a sufficient concern to us at this point to change our conclusion on this item.

10c. Checklist Item 7(III): Operator Services. In addition to the requirement of Section 271(c)(2)(B)(vii)(III) of the federal Act noted above, Section 251(b)(3) of the federal Act requires that this access be given ". . . with no unreasonable dialing delays." Again, Qwest generally demonstrated its compliance with this item and either satisfactorily explained its positions or proposed SGAT changes to meet the objections of McLeodUSA, and McLeodUSA did not lodge objections to Qwest's proposals. However, because aspects of this Checklist Item are subject to ROC performance measures (OS-1 and OS-2; *see* Report at page 41), we will await the completion of the auditing process before making a recommendation on this item.

10d. We conclude that Qwest appears generally to comply with Checklist Item 7. When the auditing process is complete and items deferred to other workshops have been resolved, we will then make our recommendation about Qwest's compliance with Checklist Item 7.

11. Checklist Item 8: White Pages Directory Listings. Section 271(c)(2)(B)(viii) of the act requires Qwest to provide "white pages directory listings for customers of the other carrier's telephone exchange service." Section 251(b)(3) requires this to be done in a nondiscriminatory manner. This includes: [i] nondiscriminatory appearance and integration of white pages listings for CLEC customers, and [ii] listings having the same accuracy and reliability as those of Qwest's customers. As before, many of the issues raised in the Paper Workshop were either explained satisfactorily by Qwest or it proposed acceptable changes to its SGAT.

11a. AT&T raised the issue of parity of treatment for a CLEC's directory listings by Qwest based on the ROC's Performance Measures Audit which revealed differences in the treatment of listing updates, the relevant Performance Measures being DB-1 and DB-2 concerning parity in listing accuracy and reliability. Qwest is in the process of implementing changes in its procedures to eliminate the problems but it has not yet finished the process. (Report, pages 43-46.) Because we will examine the OSS test results, including the Performance Measures Audit, we do not believe that we should consider this issue resolved at this time. Qwest should be allowed sufficient time to put its revised directory update procedures in place and show, through the Performance Measures Audit, that it has dealt successfully with the identified issues. We will make a recommendation on this item when the changes and auditing are complete.

11b. At pages 47-49, the Report lists and discusses several other issues raised regarding Checklist Item 8, generally finding that they should not be the bases for changes in Qwest's SGAT. We find no fault with the reasoning or disposition proposed in the Report and conclude that it provides a reasonable resolution of these issues. We specifically conclude that the obligation of Section 10.4.2.5 of the SGAT, regarding the release of a carrier's listings to third parties, should not be made reciprocal. The SGAT properly allows each carrier to decide how and whether it will allow its listings to be sold by other carriers. We admonish carriers doing business in Wyoming that this control should never be misapplied to prevent directory information services from having complete and up-to-date listings for all telephone service subscribers in each Wyoming exchange. Carriers have, in the past, become engaged in extended disputes over listings which have harmed subscribers and seriously lessened the value of their service.

12. Checklist Item 9: Numbering Administration. Section 271(c)(2)(B)(ix) of the federal Act requires that:

> "[u]ntil the date by which telecommunications numbering administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules."

The Report notes three outstanding issues and states that the parties have agreed that "Location Routing Number" and "Number Reassignment" should be treated as issues in Workshop 1 under Checklist Items 1 and 11, respectively. We concur with this disposition of these issues for Paper Workshop purposes.

12a. The third outstanding issue concerns AT&T's assertion that Qwest has been slow in assigning new CLEC NXX prefixes. Because ROC Performance Measure NP-1 will provide evidence of how well Qwest performs, we conclude that our recommendation on Numbering Administration should await the successful completion of the auditing process on this subject. AT&T has asked for a deferral of *consideration* of this issue until after the audit is complete; and Qwest asks for a conditional determination that it complies with this Checklist Item, subject to review of audited performance results. We note that the requests of the concerned parties differ little in practical effect in that neither suggests that we find compliance at this point, and both suggest that the results of the Performance Measures Audit should determine the outcome. We conclude that it would not be appropriate to make a recommendation on Checklist Item 9 at this time, but to await the auditing results on Performance Measure NP-1. If the results show compliance, we intend to make our recommendation then and may do so without initiating additional proceedings at that time, if the case then warrants this efficient approach to resolution.

13. Checklist Item 10: Call-Related Databases and Signaling. Section 271(c)(2)(B)(x) requires "[n]ondiscriminatory access to databases and associated signaling necessary for call routing and completion." The Report notes that Qwest has generally satisfied the outstanding questions and objections of other parties regarding this Checklist Item. However, because aspects of this Checklist Item are subject to ROC performance measures (DB-1 and DB-2; *see* Report at page 52), we will await the completion of the auditing process before making a recommendation on this item.

14. Checklist Item 12: Local Dialing Parity. Section 271(c)(2)(B)(xii) of the federal Act requires: "[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)." Regarding this Checklist Item, we note that the ROC has not developed performance measures or standards on the subject and that the FCC has determined such measures to be unnecessary. *See*, Second Report and Order and Memorandum Opinion and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, *et al.*, FCC 96-333, 11 FCC Rcd 19392 ¶162 (August 8, 1996). The Report notes at page 54, that Qwest has met the objections of AT&T

concerning line provisioning and UNE-Ps with modifications of its SGAT. This being the case, we conclude that we should recommend at this time that Qwest complies with Checklist Item 12.

15. Our consideration of a number of Paper Workshop issues, as discussed above, illustrates the importance of the ROC OSS process to the successful completion of the multi-state 271/SGAT process. Because some of our recommendations in this order are conditional and therefore subject to further action based on ROC OSS Performance Measures auditing, we remind all participants of ordering paragraph 4 of our March 16, 2001, Order Revising Portions of Procedural Schedule. It stated:

> "4. Regarding the existence of the OSS testing proceeding under the auspices of the Regional Oversight Committee, the Commission will determine, on completion of that testing, what process it will use to consider the results. To encourage an orderly and timely consideration of those results, the Commission asks each participant to provide to the Commission and all other participants in the workshops, by June 15, 2001, preliminary comments and recommendations regarding the process to be used to consider the testing results."

We strongly urged parties to make comments and recommendations to the Commission and to all other participants by June 15, 2001, on how we could best utilize the ROC OSS testing and audit results in making our determinations in this proceeding. We urged participants to provide their ideas on the simplest and fairest possible procedure for considering Qwest's audited performance measures so that the results may be incorporated with the greatest efficiency into our further consideration. Parties are encouraged to supplement their June 15, 2001, filings or make additional recommendations in the future concerning the Commission's use of these results.

16. We conclude that the proceedings to date have been properly noticed and conducted. Participants have been given fair opportunity to observe the process and participate meaningfully in it. The Report provides an accurate and unbiased summary of the proceedings and should be accepted by the Commission.

17. Regarding the quality of the evidence which we must consider, the Wyoming Administrative Procedure Act, at W.S. § 16-3-114(c)(ii)(E), requires our decisions to be supported by "substantial evidence"; and W.S. § 16-3-108(a) shows us that this is ". . . the type of evidence commonly relied upon by reasonably prudent men in the conduct of their serious affairs." Our determinations regarding the Paper Workshop are based on substantial evidence.

18. In addition to serving the ends of the federal Telecommunications Act of 1996 as discussed above, the Paper Workshop and our decision in this order also further the goals of the Wyoming Telecommunications Act of 1995, including without limitation, the procompetitive policies set forth in W.S. §§ 37-15-102 and 37-15-404. This decision moreover serves the public interest, a standard applicable

to telecommunications cases in Wyoming. *See*, *Tri County Telephone Association, Inc., v. Wyoming Public Service Commission, et al.*, 11 P.3d 938, 941 (Wyo. 2000).

19. We conclude that Qwest has met the first standard for establishing checklist compliance with respect to Paper Workshop Checklist Items, 3, 7, 8, 9, 10, and 12, as that standard is described above at paragraph 6a, but subject to the noted issue deferrals, consideration of test and audit results and any further refinement of the SGAT which might be agreed upon in later workshop proceedings. We conclude that Qwest has also met the second standard described above at paragraph 6b with respect to Paper Workshop Checklist Items 3 and 12.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Commission recommends that Qwest be considered in compliance with Paper Workshop Checklist Items 3 and 12.

2. The Commission does not, at this time make any recommendation concerning Qwest's compliance with Paper Workshop Checklist Items 7, 8, 9, or 10, pending satisfactory decisions on referred issues and satisfactory ROC OSS Performance Measures Audit results, all as more particularly described hereinabove.

3. Qwest shall, to assist the Commission and the parties in assessing the progress made to date, file new SGAT language with the Commission incorporating all of the agreed changes made as a result of the Paper Workshop. This SGAT language shall be used only for the purpose of clarifying our understanding of the progress made in this case, and it shall be subject to further modification as the Workshop process continues.

4. This order is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming, on June 25, 2001.

PUBLIC SERVICE COMMISSION OF WYOMING

/s/ Steve Ellenbecker

STEVE ELLENBECKER, Chairman

/s/ Steve Furtney

STEVE FURTNEY, Deputy Chair

/s/ Kristin H. Lee

KRISTIN H. LEE, Commissioner

(SEAL)

Attest:

/s/ Stephen G., Oxley

STEPHEN G. OXLEY, Secretary and Chief Counsel

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION OF QWEST CORPORATION REGARDING RELIEF UNDER SECTION 271 OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996, WYOMING'S PARTICIPATION IN A MULTI-STATE SECTION 271 PROCESS, AND APPROVAL OF ITS STATEMENT OF GENERALLY AVAILABLE TERMS	)	Docket No. 70000-TA-00-599 (Record No. 5924)

ORDER ON GROUP 2 CHECKLIST ITEMS
(Issued December 4, 2001)

This matter is now before the Wyoming Public Service Commission (Commission) for consideration of the degree to which Qwest Corporation (Qwest) has complied with checklist items 1 (Interconnection and Collocation), 11 (Number Portability), 13 (Reciprocal Compensation) and 14 (Resale) found in the federal Telecommunications Act of 1996 (the federal Act) at 47 U.S.C. § 271(c)(2)(B)(i), (xi) (xiii), and (xiv). We will also determine the extent to which Qwest's Statement of Generally Available Terms (SGAT) for Wyoming provides for the development of a competitive telecommunications market in Wyoming under Sections 251 and 252 (d) and (f) of the federal Act. The Commission, having reviewed the Workshop Report filed in this portion of the proceeding, the written comments and arguments of the parties, having heard oral arguments in open hearing, having reviewed applicable telecommunications utility law, and being otherwise fully advised in the premises, HEREBY FINDS AND CONCLUDES:

1. Because the Group 2 issues are among the most fundamentally significant of any which must be resolved in the proceeding, we recognized their great importance to Wyoming and made a number of procedural accommodations for Wyoming parties to ensure full and fair presentations of all aspects of the Group 2 issues.

2. On May 15, 2001, the consultant retained by the states participating in the Qwest Section 271 compliance proceeding (the Consultant), with the assistance of state commissions staff members, issued his Report on Workshop One (the Workshop Report) giving recommendations to the commissions on the disposition of Group 2 issues in this case.

3. On May 15, 2001, the Commission issued its Order Setting Oral Argument and Scheduling Deliberation Regarding Group 2 Workshop Items, setting oral arguments for public hearing on June 15, 2001, in the Commission's hearing room at Cheyenne, Wyoming, and setting the deliberation on Group 2 issues for July 25, 2001, in the same venue. In this order, Wyoming parties were asked to make presentations [i] on the advisability of adopting, modifying or rejecting the disposition of any issue as then recommended to the Commission on the record, and [ii] regarding any Wyoming-specific Group 2 workshop topics which should come before the Commission for the presentation of additional Wyoming-specific evidence that should be done to allow a fully informed and fair decision for Wyoming in the public interest. In that order, we reminded the parties that "[a]ny party suggesting that further evidence of any kind be taken must be prepared to show why the multi-state proceeding could not and did not address the issue adequately, including full discussion of any facts that could not have been known or presented at the time the record was being developed during the multi-state proceeding."

4. On June 15, 2001, pursuant to due notice, the Commission held oral arguments in this portion of the above-captioned proceeding. Qwest, the Consumer Advocate Staff of the Commission

(Consumer Advocate Staff) and the group of Visionary Communications, InTTec, NetWright, LLC, trib.com and Opcom, doing business as WCS (collectively, the Visionary Group) appeared through counsel and participated to the extent they deemed necessary. Thereafter, the Commission deliberated this matter, as noticed, on July 25, 2001, and directed the preparation of an order consistent with their decision.

Checklist Item 1: Interconnection

5. Checklist Item 1, Interconnection, based on Section 271(c)(2)(B)(i) of the federal Act, requires Qwest to provide "[i]nterconnection in accordance with the requirements of §§ 251(c)(2) and 252(d)(1)." Under Section 251(c)(2), Qwest has:

> "The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--
>
> "(A) for the transmission and routing of telephone exchange service and exchange access;
>
> "(B) at any technically feasible point within the carrier's network;
>
> "(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
>
> "(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252."

Section 252(d)(1) of the federal Act establishes pricing standards for interconnection, stating:

> "(1) INTERCONNECTION AND NETWORK ELEMENT CHARGES- Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section--
>
> "(A) shall be--
>
> "(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and
>
> "(ii) nondiscriminatory, and
>
> "(B) may include a reasonable profit."

6. The parties to the proceeding resolved a total of 40 issues related to interconnection. (Workshop Report at pp. 19-32.) We have reviewed the Workshop Report on these points and find the conclusions well reasoned and in the public interest. We will therefore adopt the Workshop Report's recommendations on these interconnection issues.

7. The Workshop Report identified and discussed, at pp. 33-51, 12 unresolved issues concerning Interconnection, including:

1. Indemnification For Failure to Meet Performance Standards,
2. Entrance Facilities As Interconnection Points,
3. EICT Charges for Interconnection Through Collocation
4. Mid-Span Meets POIs,
5. Routing of Qwest One-Way Trunks,

6. Direct Trunked Transport in Excess of 50 Miles in Length,
7. Multi-Frequency Trunking,
8. Obligation to Build to Forecast Levels,
9. Interconnection at Qwest Access Tandem Switches,
10. Inclusion of IP Telephony as Switched Access in the SGAT,
11. Charges For Providing Billing Records, and
12. Combining Traffic Types on the Same Trunk Group.

Of these twelve unresolved issues, Qwest agreed to accept the decisions in the Workshop Report on issues 1-5, 7, 8 and 10-12. No party disputed the Consultant's resolution of issues 1, 3-5, 7, and 10-12. We have reviewed the Workshop Report on these subjects; and we find it in the public interest to adopt the Workshop Report's recommendations on these issues. This leaves Interconnection issues 2, 6, 8 and 9 for further discussion and decision by the Commission.

Interconnection Issue 6

8. Qwest objected to the Workshop Report's suggested resolution of Interconnection Issue 6 regarding Direct Trunked Transport in Excess of 50 Miles in Length which would have required Qwest to build direct trunked transport (DTT) in excess of 50 miles, eliminating any limitation on the obligation except that it should be analyzed in a costing docket to obtain more clarity and perhaps impose some limitations. (Workshop Report, p. 41.) This could require Qwest to build DTT, the infrastructure available between switches to carry traffic between carriers, in excess of 50 miles in length. Qwest and interested competitive local exchange carriers have already agreed to make such facilities available when they exist and are available. In Qwest's Comments on the Facilitator's Report on Checklist Items 1, 11, 13 and 14 for the Multi-state Proceeding, filed with the Commission on May 29, 2001 (the Qwest Comments), Qwest noted that it has agreed to build DTT up to 50 miles in length and had argued that it should not have to build DTT in excess of this distance. Qwest, however, proposed in the Qwest Comments, at p. 11, a compromise amendment to the SGAT which would provide:

> "7.2.2.1.5 If direct trunked transport is greater than fifty (50) miles in length, and existing facilities are not available in either Party's network, and the Parties cannot agree as to which Party will provide the facility, the Parties will bring the matter before the Commission for resolution on an individual case basis."

9. Given the character of Wyoming's telecommunications markets, we expect that instances in which DTT longer than 50 miles would be required by an interconnecting carrier will be relatively rare; but we acknowledge that there are areas in which the sparse population of the state might require such construction. Since it is possible for such facilities to be extremely long in Wyoming , we find that the best and most efficient solution is to accept Qwest's proposal to bring such situations to the Commission for resolution on a case-by-case basis. Costing and cost recovery issues can be addressed in such a proceeding and the Commission will provide a knowledgeable forum with local expertise to resolve problems that might arise. If it is possible for a costing proceeding to shed further light on the subject in establishing prices or discerning some rational economic limitations on Qwest's responsibility, we support using a costing docket to further clarify this interconnection issue. We will adopt the Qwest proposal for paragraph 7.2.2.1.5 of the SGAT. This will protect Qwest from abusive or unrealistic (uneconomical) requests by CLECs. The outlying areas which CLECs could reach with DTT facilities longer than 50 miles would, at least in Wyoming, most probably produce relatively small traffic volumes, on the basis of which Qwest might have no more than a slim chance of recovering its costs. The Commission is best situated to provide a decision under the circumstances present in Wyoming; and we therefore modify the Workshop Report on this issue as discussed above.

Interconnection Issue 9

10. Qwest objected to the Workshop Report's suggested resolution of Interconnection Issue 9 regarding interconnection at its access tandem switches. Qwest sought to allow CLECs to have access only at local tandem or end-office switches, precluding access at access tandems. Subsections 251(c)(2)(B) and (C) of the federal Act require that Qwest provide for interconnection ". . . at any technically feasible point within the carrier's network; that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party . . . ." AT&T argued, *inter alia*, that Qwest's stance did not conform to Subsections 251(c)(2)(B), noting that it would require AT&T to bear unnecessary expense in constructing trunking to Qwest end-office switches, even to serve a single customer. Other CLECs raised similar arguments. (Workshop Report, pp. 45-46.) Qwest made technical arguments in opposition, stating that it had constructed essentially two separate networks to transport local traffic and switched access, and observing, *inter alia*, that allowing local traffic to interconnect at the access tandem would strand capacity at local switches and cause capacity problems for its switched access network. (Workshop Report, p. 46.) The Consultant found that interconnection at the access tandem was technically feasible but also noted that there is some evidence that Qwest's network configuration "as it concerns the division of tandem switches" could cause problems at higher usage levels. The Workshop Report was careful, however, to balance the need to allow competitors to choose to interconnect at technically feasible points with the need to consider the problems that some possible interconnection configurations might cause. (Workshop Report, pp. 47-48.) Qwest argued that the 512 CCS (centum call seconds) standard, an amount of traffic equal to one DS1 line, would be the appropriate standard for identifying the point at which, for economic cost and physical traffic volume reasons, interconnecting CLECs should have to obtain direct trunking facilities instead of using tandem trunking. (Transcript of June 15, 2001, oral arguments before the c, pp. 20-21.)

11. All carriers, and, more importantly, the public, have an interest in limiting call blockage as much as is reasonably possible. Qwest claims that the 512 CCS rule will protect it, CLECs and end-users from unnecessary call blockage. This standard is contained within many interconnection agreements in the state of Wyoming; and the Commission understands that no other CLEC has challenged the standard in other Section 271 proceedings.

12. We must balance the need to allow CLECs to choose their points of interconnection wherever possible, but must balance this with the need for reasonable limits on this ability when the choice might degrade the public switched network. We therefore approve the changes to Section 7.2.2.9.6 of the SGAT as recommended in the Report because it strikes the needed balance. It should read as follows:

> "7.2.2.9.6 The parties shall terminate Exchange Access Service (EAS/Local) traffic on tandem or end office switches. When there is a DS1 level of traffic (512 BHCCS) between CLEC's switch and a Qwest End Office Switch, Qwest may request CLEC to order a direct trunk group to the Qwest End Office Switch. CLEC shall comply with that request unless it can demonstrate that such compliance will impose upon it a material adverse economic or operations impact. Furthermore, Qwest may propose to provide interconnection facilities to the local tandems or end offices served by the access tandem at the same cost to the CLEC as interconnection at the access tandem. If the CLEC provides a written statement of its objections to a Qwest cost-equivalency proposal, Qwest may require it only: (a) upon demonstrating that a failure to do so will have a material adverse affect on the operation of its network and (b) upon a finding that doing so will have no material adverse impact on the operation of the CLEC, as compared with interconnection at such access tandem."

As a necessary adjunct to the change approved above, we accept the necessity of revising the last sentence of Section 7.1.1 of the SGAT to allow Qwest to demonstrate the clear risk of switch exhaust in interconnections at tandem switches (where it is not using the network for local traffic purposes similar to those of the connecting CLEC). That last sentence should read:

> "New or continued Qwest local tandem to Qwest access tandem and Qwest access tandem to Qwest access tandem switch connections are not required where Qwest can demonstrate that such connections present a risk of switch exhaust and that Qwest does not make similar use of its network to transport the local calls of its own or any affiliate's end users."

This provides an adequate opportunity for the Commission to hear and resolve problems as they arise. Further, as noted, SGAT Section 7.4.5 exists solely as a limitation on traffic exchanges at access tandems. This section should be stricken from the SGAT. Likewise, the last two sentences of Section 4.11.2 serve only to restrict traffic exchange at access tandems; and it should also be stricken. (Workshop Report at p. 49.) The new language approved above adequately protects the rights of the parties and the interests of the public.

Interconnection Issue 2

13. Entrance facilities as points of interconnection. AT&T sought several revisions to the SGAT regarding entrance points as interfaces between local carriers and interexchange carriers to allow completion of long distance calls. As noted in the Workshop Report at p. 35, this issue involves the question of whether and how CLECs should use and pay for facilities obtained for interstate purposes when they will be used, at least in part, for interconnection and the provision of local services under the federal Act. We agree that the interconnection aspect of this issue is addressed adequately by adopting the "Washington decision" on the subject which would allow CLEC access to unbundled network elements at entrance facilities. That decision states that:

> "Qwest must modify its SGAT to permit interconnection using entrance facilities at any technically feasible POI chosen by the CLEC, including interconnection for access to UNEs, and must revise SGAT section 7.1.2 as agreed at the workshop." (Quoted at Workshop Report, p. 36.)

The rest of this issue is largely an issue of reciprocal compensation to be discussed below.

Interconnection Issue 8

14. The obligation to build to forecast levels. If Qwest is to, as it has agreed, provide interconnection trunks to CLECs promptly, it must obtain information from interconnecting CLECs to ensure that the problems of under or over building (e.g., call blocking and expensive and unused additions to plant) are minimized. There is no disagreement among the parties that an interconnection forecasting process is required. The matter in contention in this issue centers on the relationship between CLEC forecasts and deposits required by Qwest to ensure the seriousness of the forecast. We must hold in check the potential abuses of unreasonably high and potentially anticompetitive deposit requirements and unreasonably optimistic CLEC forecasts. However, if Qwest builds trunks because of a forecast, the forecasting CLEC is not obligated to order or pay for all of the trunks built in response to its forecast. The public thus has a stake in fostering competition and, at the same time, not requiring expensive system overbuilding. A CLEC should also be protected from a penalty if a trunk it forecasted is built and used by another entity.

15. The Workshop Report struck a workable balance of equities among the parties, recommending that: [i] Qwest should be required to build to the lower of the two relevant forecasts with no charge; [ii] if a CLEC has not utilized its trunks for 18 continuous months at a rate of at least 50%, Qwest would still be obliged to build trunks to a higher CLECs forecast if the CLEC pays a deposit (which would be refunded based on actual trunk usage thereafter); [iii] trunk utilization rates for determining the need for a deposit will be based on actual trunks in service, not the number forecast; and [iv] the CLEC's relevant deposit must be refunded if anyone uses the trunk within a six month period. We believe that this encourages accuracy, discourages abuse by either party and accurately and fairly

states how the deposits should be determined and refunded. When a trunk is being used, the reason to hold a deposit for it changes from a wise encouragement of prudency to a direct penalty. We thus believe that the SGAT should contain language specifically allowing the refund of CLEC deposits based on the actual usage of trunks no matter who utilizes them. We agree that the following language should be added to the SGAT for this purpose:

> "7.2.2.8.6.2 Where there is a reasonably reliable basis for doing so, Qwest shall include in the trunks-required calculation any usage by others, including but not limited to Qwest itself, of facilities for which that CLEC has made deposit payments. Qwest shall not be required to credit such usage more than once in all the trunks-required calculations it must make for all CLECs in the relevant period."

(See, Workshop Report, pp. 43-45.)

Interconnection: Single point of interconnection.

16. At Section 7.1.2 of the SGAT, Qwest offers CLECs the ability to interconnect at one point (POI) in a LATA, and there is no particular argument on the issue or its resolution. If Qwest's internal policies and procedures are not yet conformed to agreements reached in the workshops, that is to an extent understandable, given the vast number of changes to Qwest's operations and documentation generated by the multi-state process. Qwest has committed to timely changes (within 45 days of workshop closing); and it has implemented a change management system (CICMP) to notify CLECs of policy changes affecting them. These changes cannot be expected to occur at once, but we will expect them to occur in a thorough and timely manner (and the CICMP process will itself be taken up in the workshop on General Terms and Conditions). Qwest must therefore modify its policies to conform with Section 7.1.2 of the SGAT. That it may have not done so already is not a reason to leave this issue open. We invite any participant in the above-captioned proceeding to bring it to our attention at a later point in time if Qwest has not made the promised changes and updates, but we will consider this item closed now, subject to reopening on the facts.

Checklist item 1: Collocation

17. Under 47 U.S. C. §251(c)(6), ILECs have an obligation to:

> "provide, on rates, terms and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations."

18. The parties to the proceeding resolved a total of 54 issues related to collocation. (Workshop Report at pp. 52-73.) We have reviewed the Workshop Report on these points and find the conclusions well reasoned and in the public interest. We will therefore adopt the Workshop Report's recommendations on these interconnection issues.

19. The Workshop Report, at pp. 73-74, identified and discussed four issues which were recommended for deferral or consideration elsewhere, including:

1. Reciprocal Compensation for Collocation Facilities Used for Interconnection (in this Workshop Report),

2. Collocation Costs (deferred for price setting in states, particularly Utah),

3. Lack of Available Facilities (in this Workshop Report), and

4. APOTS-CFA information (to be addressed as an SGAT General Terms and Conditions issue).

We find the proposed disposition of these issues by the Workshop Report to be adequate and in the public interest. We accept them and will not discuss them further here.

20. At pp. 74-95, the Workshop Report identified 15 unresolved issues concerning Collocation, including:

1. "Product" Approach to Collocation
2. Adjacent Collocation Availability
3. Precluding Virtual Collocation at Remote and Adjacent Premises
4. Cross Connections at Multi-Tenant Environments (MTEs)
5. Listing of Space-Exhausted Facilities
6. ICB Pricing for Adjacent and Remote Collocation
7. Conversion of Collocation Type -- Payment of Costs
8. Recovery of Qwest Training Costs
9. Removal of Equipment Causing Safety Hazards
10. Channel Regeneration Charges
11. Qwest Training Costs for Virtually Collocated Equipment
12. Requiring SGAT Execution Before Collocation May Be Ordered
13. Forfeiture of Collocation Space Reservation Fees
14. Collocation Intervals
15. Maximum Order Numbers

Qwest has accepted the decisions set forth in the Workshop Report for 14 of those issues, opposing the disposition of issue 14 regarding Collocation Intervals. (Qwest Comments, p. 12.) AT&T has accepted all but three of the Workshop Report recommendations, opposing those recommendations on issue 1, regarding "Product" Approach to Collocation, issue 4, regarding Cross Connections at Multi-Tenant Environments, and issue 10, regarding Channel Regeneration Charges. Our review of the Workshop Report shows us that the suggested resolution of disputed collocation issues 2-3, 5-9, and 11-13 are reasonable and in the public interest, with this conclusion being reinforced by the agreement of parties with generally opposing points of view on the subject. We therefore adopt the Workshop Report's recommendations with regard to those issues as being well reasoned and in the public interest. In addition, the Workshop Report asked each party to present and defend proposed SGAT language regarding issue 15 regarding maximum order numbers in a given time period.

Collocation Issue 1

21. The "Product" Approach to Collocation. Eight different forms of collocation are provided for under Qwest's SGAT which also states that the BFR (bona fide request) process should be used for other forms of collocation. Competitive local exchange carriers, on the other hand, want to ensure that newer forms of collocation will be made available to them without excessive delays. AT&T also raised objections concerning how to establish changing collocation conditions which depend on underlying technical and administrative documents which are external to the SGAT. As with any emerging issue, there is no way for the SGAT to anticipate every possible form of collocation or to provide for it. The terms and conditions may reasonably vary from those applicable to existing forms of collocation. As the Workshop Report notes, at p. 76, Qwest has agreed to offer new forms of collocation, but this offering does not solve the problems inherent to the offering of any new service or the settling of

differences between the parties. It also does not obviate the need for regulatory involvement to resolve impasses. To anticipate these problems and to address the situation in which Qwest might insist on continuing existing arrangements, the Workshop Report suggests, at p. 76, adding the following after the last sentence of Section 8.1.1 of the SGAT:

> "Other types of collocation may be requested through the BFR process. In addition, where Qwest may offer a new form of collocation, CLEC may order that form as soon as it becomes available and under the terms and conditions pursuant to which Qwest offers it. The terms and conditions of any such offering by Qwest shall conform as nearly as circumstances allow to the terms and conditions of this SGAT. Nothing in this SGAT shall be construed as limiting the ability to retroactively apply any changes to such terms and conditions as may be negotiated by the parties or ordered by the state commission or any other competent authority."

We believe that this is a well reasoned and fair way to address this situation and to keep collocation options up to date and readily and reasonably available. We adopt the Workshop Report's suggested resolution of this point.

22. Regarding the matter of the development of documentation to flesh out new collocation options, we do not believe that this issue is materially different from other issues in which documentation must be developed after the fact to make the SGAT function properly. We therefore believe that this facet of the collocation issue should be addressed later in the context of General SGAT Terms and Conditions. The Workshop Report is in accord. See, Workshop Report, pp. 74-77. This will provide a proper venue in which to refine and shorten the BFR process so that it does not itself raise barriers to competition.

Collocation Issue 4

23. Cross Connections at Multi-Tenant Environments. This issue addresses the situation in which Qwest's facilities will serve more customers than the CLEC will serve. Qwest's SGAT contains specific provisions in Section 9.3 for how CLECs obtain access to subloops generally, and Qwest has confirmed (in its Emerging Services brief) that it would impose no collocation requirement for accessing subloops provided that the locations in question were within or attached to a customer-owned building. AT&T has requested an additional provision in Section 8.1.1.8.1 of the SGAT to state that collocation is not required to obtain access to subloops. Our review of the record shows that Qwest and AT&T are in substantial agreement that its proposed addition to this section of the SGAT would be allowable. The Workshop Report found that Qwest's proposal is generally reasonable and noted that it, as embodied in Section 9.3 of the SGAT, will be taken up later in the multi-state process. We find it in the public interest to approve the Workshop Report's recommendation that Qwest's general approach provides a solution to the general question of collocation requirements in MTE environments (Workshop Report, p. 80); but we also believe it best to adopt the language proposed by AT&T for inclusion in Section 8.1.1.8.1 of the SGAT as an affirmation of this consensus. Specifically, the approved text of this section should read:

> "8.1.1.8.1 With respect to connections for access to sub-loop elements in multi-tenant environments (MTE) and field connection points (FCP), the provisions concerning sub-loop access and intervals are contained in Section 9.3. This type of access and cross-connection is not collocation."

See, AT&T Exhibit WS1-ATT-KLW-14, as discussed, February 26, 2001, Multi-state transcript at 24-26.

Collocation Issue 10

24. Channel Regeneration. Channel regeneration is required to enhance signal strength when the distance between the power source and the CLEC's collocation point is sufficiently great. AT&T argued that a forward looking approach to collocation would of necessity assume that no channel

regeneration would be needed and that Qwest should not be able to charge for it. Qwest argued that its obligation was to design and engineer an efficient route and cable racking for the desired collocation (see, SGAT, Section 8.2.1.23); and that, where regeneration was "unavoidable," the CLEC should pay the cost. The Workshop Report did not agree that Qwest should furnish needed regeneration and then not be able to recover the legitimately incurred actual nonrecurring costs, but also concluded that the SGAT should be changed to remove Qwest's right to charge for regeneration if [i] a location for collocation exists that would not require regeneration or [ii] if such a location exists and is not made available to the CLEC because Qwest has reserved it for its own business use. The Workshop Report suggests, at p. 88, the addition of the following new language to the end of Section 8.3.1.9 of the SGAT to deal with these potential abuses:

> "Channel Regeneration Charges shall not apply if Qwest fails to make available to CLEC: (a) a requested, available location at which regeneration would not be necessary or (b) collocation space that would have been available and sufficient but for its reservation for the future use of Qwest."

Section 8.3.1.9 rightly allows Qwest to make a "Channel Regeneration Charge" when the distance from the CLEC's leased physical collocation space or from the collocated equipment, in the case of virtual collocation, to the Qwest network is of sufficient length to require regeneration; and the suggested additional language places reasonable limitations on these charges. We find that AT&T's reliance upon a theoretical forward-looking approach is incorrect. We believe, therefore, that the Workshop Report's recommended addition, set forth above, is in the public interest and fairly balances the equities, making it clear that Qwest should not have the power to charge for regeneration where another available collocation location exists where regeneration would not be required, unless a CLEC chooses to remain at the location where regeneration is required.

Collocation Issue 14

25. Collocation Intervals. The question of the amount of time that should be allowed for the provisioning of collocation remains one of the more durable and widely disputed aspects of Group 2. The general argument from CLECs is that the intervals should be relatively short and fixed, with little room for dispute or interpretation and with the provision of fines or penalties for missed deadlines. Qwest generally advocated somewhat longer intervals based on a variety of circumstances which might make provisioning more complex or time consuming. The parties disagreed over whether Qwest should be allowed to extend the interval it takes to provision collocation when the CLEC did not submit a forecast, with Qwest arguing that the FCC's "national 90-day default interval for provisioning physical collocation" should, in some cases, be as long as 150 days.

26. The Workshop Report notes that neither Qwest nor the CLECs will be able to forecast with consistent precision and concludes that such imperfection should not be punished. The Workshop Report adopted the CLEC position which would require a 90-day collocation interval irrespective of whether CLECs provide Qwest with a forecast. (Workshop Report at pp. 94-95.) We disagree with the Workshop Report on this point. Requiring a 90-day interval for collocation regardless of the presence or absence of a forecast should not be understood as CLEC punishment, but as a different response to collocation requests where a forecast is not present with a premium (of some 30 days) being placed on the more responsible business practice of providing forecasts. We also note that the Post Entry Performance Plan (PEPP, now known as the Qwest Performance Assurance Plan or QPAP) will penalize Qwest for failing to meet required collocation intervals. This could produce the anomalous and undesired result of placing a financial burden on Qwest for the failure by a CLEC to provide a forecast. It is, of course, possible for Qwest to provide an unforecasted collocation in advance of any deadline, but it should not have to pay fines to a CLEC for missing a deadline when the failure of a CLEC to forecast exacerbates the situation. There should be no disincentive for forecasting; but, perhaps more importantly, there also

should be no premium on not forecasting. We therefore reverse the Workshop Report on this issue (Workshop Report, p. 95) and find, in the public interest and as described above, that the collocation provisioning intervals in Qwest's SGAT are sufficient and appropriate.

The potential for abuse of provisioning intervals remains a point of concern for the Commission, but we must balance the interests of the interconnecting parties as carefully as possible and without creating patent unfairness. We will therefore, in reversing the Workshop Report on this point, allow and approve the language proposed by Qwest on the subject for subsections 8.4.2.4.4, 8.4.3.4.3 and 8.4.3.4.4 which maintains a workable balance to encourage promptness by Qwest and forecasting by the CLECs. (*See*, Qwest Comments, pp. 13-16; and the actual text of the referenced sections found in the accompanying May 25, 2001, "SGAT Lite" as filed with the Commission, at pp. 76-79.)

Collocation Issue 15

27. Maximum Number of Collocation Orders. This issue is one of balancing the requirement for timely collocation (i.e., those requests to which the collocation intervals should apply) with the need to keep Qwest's workload from becoming impossible to manage, if it were to receive a large number of collocation orders in a short period of time. The Workshop Report, at p. 96, recognized that this balancing was reasonable; and it invited parties to propose SGAT language to address the situation. In the Qwest Comments at p. 18, Qwest proposed that Section 8.4.1.10 (formerly 8.4.3.3) of the SGAT be retained to address this situation. It provides that the time limits for Qwest's fulfillment of collocation orders would apply to no more than 5 collocation orders per CLEC, per state, per week. Above that level, Qwest would have the ability to negotiate the time intervals individually.

Although the number of interconnection orders will vary over time and from market to market, Wyoming's market is relatively small in comparison to those of other jurisdictions in which Qwest operates. Therefore, Qwest's proposal for a 5 order threshold would be, subject to experience and any modification of the SGAT if needed later, most reasonable in Wyoming of all the states in which it operates. The provision for negotiation over this level requires Qwest and the CLEC to coordinate Qwest's efforts to meet unusually high order volumes. This too is reasonable in light of the requirements of the federal Act for good faith negotiations and fair dealing by interconnecting incumbent local exchange companies. Qwest should have the obligation to meet "reasonably foreseeable demand" for collocation in a routine and timely manner, and collocation interval provisions should apply to this level of activity.

The language proposed by Qwest for retention in the Wyoming SGAT is found at Section 8.4.1.10.

> "The intervals for Virtual Collocation (Section 8.4.2), Physical Collocation (Section 8.4.3), and ICDF Collocation (Section 8.4.4) apply to a maximum of five (5) Collocation Applications per CLEC per week per state. If six (6) or more Collocation orders are submitted by CLEC in a one-week period in the state, intervals shall be individually negotiated. Qwest shall, however, accept more than five (5) Applications from CLEC per week per state, depending on the volume of Applications pending from other CLECs."

We agree that this language generally addresses the situation and does so fairly, with the exception that the actual SGAT language should particularly identify its applicability to Wyoming so that there is no doubt that the requirement applies in a Wyoming context and not in a more general sense. Therefore, we will approve the following language for Section 8.4.1.10:

> "The intervals for Virtual Collocation (Section 8.4.2), Physical Collocation (Section 8.4.3), and ICDF Collocation (Section 8.4.4) apply to a maximum of five (5) Collocation Applications per CLEC per week in Wyoming. If six (6) or more Collocation orders are submitted by CLEC in a one-week period in Wyoming, intervals shall be individually

> negotiated. Qwest shall, however, accept more than five (5) Applications from CLEC per week in Wyoming, depending on the volume of Applications pending from other CLECs."

Finally, this language is also required because it treats all CLECs with relative equality. No one CLEC should be able to absorb all of Qwest's ability to respond to collocation orders by placing a large order in a short period of time to the exclusion of other companies seeking to have their orders filled in a timely manner also. Qwest has shown that large and uneven numbers of collocation orders in a short period of time do tax its ability to respond in a timely manner and meet its performance requirements. This fairly balances the pertinent requirements and is in the public interest because it does not require Qwest to over deploy resources to address theoretically possible levels of collocation orders but gives it clear targets to meet and a clear path for others to take in getting Qwest to fulfill their orders.

Checklist Item 11: Local Number Portability

28. Checklist Item 11, Local Number Portability. The term "number portability" is defined at Section 3(a)(2)(46) of the federal Act as meaning:

> ". . . the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."

Section 251(b)(2) of the federal Act gives all local exchange carriers the duty ". . . to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." Finally, Section 271(c)(2)(B)(xi) of the federal Act sets up interim and final number portability requirements as Checklist item 11. A Bell operating company meets the requirement of this item if it offers access and interconnection which includes:

> "Until the date by which the Commission [FCC] issues regulations pursuant to section 251 to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations." [Editorial material added.]

29. The parties to the proceeding resolved a total of 13 issues related to number portability. (Workshop Report at pp. 98-100.) We have reviewed the Workshop Report on these points and find the conclusions well reasoned and in the public interest. We will therefore adopt the Workshop Report's recommendations on these number portability issues.

30. The Workshop Report also identified a non-SGAT issue concerning the actual ability of Qwest to port numbers in a timely manner. It noted that the Wyoming Consumer Advocate Staff expressed concerns that "huge delays" in transferring service have been seen in Wyoming, and that the problem would not be settled ". . . until competitive companies have had some experience with Qwest pursuant to the SGAT terms and conditions." (Workshop Report, p. 101.) This is a portion of the Consumer Advocate Staff's general caution that actual experience should be the test for Qwest's opening of its local exchange markets to competition. The Workshop Report addressed this general argument in its Common Issues section. There the Consultant commented that:

> "The survey presented by the Wyoming CAS is not without benefit in these proceedings. It can be taken as evidence that Qwest has had historical performance problems in serving CLECs. What the survey does not do, however, is to lay a sufficient foundation for overcoming the belief that OSS testing and post entry performance plans may serve adequately to provide a basis for determining whether Qwest should secure Section 271 approval. It is not certain how this conclusion might have been different, had CLECs complied better with the repeated requests of the participating state commissions to make these workshops more focused on "real world" experience. That is speculative; what is not is that CLECs have stood largely silent on the question of supporting general complaints and

concerns with detailed information relating to the kind of issues that at least some of them were willing to provide responses to in the Wyoming CAS survey.

"Where that leaves us in these workshops is with the conclusion that we must look largely to the OSS test and the post entry assurance plan to guide final judgments on the kinds of performance issues that the WCAS survey raised. That opportunity will come; the commissions have already stated in their procedural orders that they will create a means for doing so." (Workshop Report, p. 18.)

We will reserve further judgment on this issue pending further information to be presented to the Commission regarding Group 5 and Group 5A issues and regarding the ROC third-party OSS testing, all of which will be done before the end of this year; but we will rely heavily on the test and plan in our decision.

31. The Workshop Report identified one number portability issue remaining unresolved, that being coordinating local number portability and loop cutovers. This aspect of number portability deals with the necessity of coordinating the porting of a number to a CLEC with the disconnection of the line by Qwest. The carriers must ensure that a customer's number has been ported before the disconnect occurs so that customers do not experience lapses in service. In working with AT&T on this issue, Qwest agreed to disconnect (cut over) the line at 11:59 pm on the day after the scheduled port, thus greatly reducing the problem of a customer being out of service for a time if a CLEC did not complete its work on time. The consensus reached on this point is a positive result which clearly serves the public interest. We adopt this resolution, noting with approval the discussion of the Workshop Report at p. 105, which shows the value of this resolution in the case of facilities based competition as well as competition in a resale environment. The levelness of the playing field should not depend on the form of market entry chosen by the competitor. Qwest has added an appropriate change to the SGAT, and it addresses, and exceeds, the suggested requirement of the Workshop Report, at p. 107, that, "If a CLEC requests Qwest to do so by 8 p.m. Mountain Time, Qwest will assure that the Qwest loop is not disconnected that day."

32. Taking similar care to ensure continuous service to customers, AT&T asked Qwest to develop a way to verify that the CLEC had completed its portion of a number port before Qwest disconnected the customer's Qwest's line. The Workshop Report at p. 107, asked Qwest to commit to study more automated means of coordinating cutovers to minimize service disruptions. The ability to verify smoothly and efficiently will eliminate service problems and may keep costs down for Qwest and connecting CLECs. We approve of this resolution and note that no party has disagreed on the subject.

33. We note with approval that Qwest offers a closely coordinated manual process for coordinating cutovers which requires Qwest and CLEC technicians to coordinate in the porting process. Qwest also offers a fully automated flow-through process. The existence of both these processes will allow the interconnecting carriers to stop number porting before an unintended disconnect occurs.

34. We applaud the sincere efforts of the parties to address number portability issues, and to go beyond the Workshop Report in some instances to do so. We will now await the results of the ROC OSS third-party testing procedure to see whether that consensus works in practice. After the testing, we will make further determinations on this issue.

Checklist Item 13: Reciprocal Compensation

35. Checklist Item 13, Reciprocal Compensation, is found at Section 271(c)(2)(B)(xiii) of the federal Act. It requires that access or interconnection offered by a Bell operating company to other carriers include "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)" of the federal Act, which provides:

"(2) CHARGES FOR TRANSPORT AND TERMINATION OF TRAFFIC-

"(A) IN GENERAL- For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless--

"(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and

"(ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

"(B) RULES OF CONSTRUCTION- This paragraph shall not be construed--

"(i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or

"(ii) to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls."

Section 251(b)(5) places the duty on Qwest to establish a reciprocal compensation arrangement for transport and termination of traffic, essentially, local calls that originate on the network of another carrier.

36. Rather than putting on witnesses on this Checklist item, the parties to the workshop agreed to introduce the record and consensus reached in the Colorado and Washington hearings on reciprocal compensation into the record of this multi-state proceeding. The Workshop Report also resolved the reciprocal compensation issues of [i] the definition of tandem switching, and [ii] including IP telephony in switched access. We find, after a review of the relevant Workshop Report, record and other documents in the record of this case, that it is in the public interest to approve and adopt the resolution of the consensus items and the resolved items, as discussed in the Workshop Report, at pp. 109-110. Thereafter, five issues remained in dispute here (as they did in other jurisdictions), including:

1. Excluding ISP Traffic from Reciprocal Compensation;
2. Qwest's Host-Remote Transport Charge;
3. Commingling of InterLATA and Local Traffic on the Same Trunk Groups;
4. Exchange Service Definition; and
5. Including Collocation Costs in Reciprocal Compensation.

Qwest did not challenge the resolutions proposed by the Workshop Report. (Qwest Comments at p. 22.) AT&T commented only on the issue of "ratcheting" in the context of unresolved issue 3, Commingling of InterLATA and Local Traffic on the Same Trunk Groups.

Reciprocal Compensation Issue 1

37. The question of whether or not ISP traffic should be excluded from reciprocal compensation was raised, and Qwest did not want to make reciprocal compensation payments with respect to ISP traffic. The applicability of reciprocal compensation to ISP traffic turned on the intrastate or interstate character of this traffic. The FCC settled the question in its April 27, 2001, decision, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, in CC Docket 96-98, FCC 01-131. It clearly stated that ISP traffic would be considered interstate in nature and thus not subject to reciprocal compensation as local traffic.

The Workshop Report addresses the issue by asking that workshop participants propose essentially curative SGAT language to ensure that it complies with the FCC's April 27, 2001, decision. (Workshop Report, p. 113.) In Exhibit A, pp. 37-38, to Qwest's Comments, it made a detailed proposal for an SGAT section 7.3.6 and subsections concerning ISP-bound traffic. The SGAT proposal is conceptually tied to the FCC's April 27, 2001, order in Qwest's Comments, at pp. 22-23, and is summarized below. The SGAT:

- specifically exempts, at section 7.3.6, ISP traffic from the category of traffic for which reciprocal compensation must be paid.

- utilizes bill and keep as the recovery mechanism for ISP traffic because it eliminates an opportunity to gain a competitive advantage simply by shifting costs to other carriers, since ISP traffic generates substantial amounts of one-way traffic and bill and keep prevents collection of costs from other carriers. The SGAT provides for a 36-month transition towards a complete bill and keep recovery mechanism.

- puts in place a staged series of reductions in charges per minute of use for intercarrier compensation for ISP bound traffic during the transition to avoid the possibly drastic effects of a "flash cut" and to lessen the incentive to pursue arbitrage abuse.

- places a series of graduated caps on the total number of ISP-bound minutes for which an interconnecting local exchange carrier may receive reciprocal compensation.

- makes a presumption that traffic exchanged between interconnecting LECs which exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound, but subject to the ability of a company to demonstrate to the Commission that this is not true.

We find that Qwest's proposed mechanism provides for a balancing of interests during the transition to a bill and keep regime for ISP-bound traffic. We conclude that Qwest's proposed SGAT language furthers the public interest and conforms to the FCC decision as proposed generally above and should be approved.

Reciprocal Compensation Issue 3

38. AT&T and others commented on the "Ratcheting" issue involved in issue 3, Commingling of InterLATA and Local Traffic on the Same Trunk Groups. They thought that they should be able to make "efficient use" of "spare" special access circuits for interconnection. The two issues are [i] whether or not local and interLATA toll traffic should be commingled on the same trunk group, and [ii] should the economies of this use be allowed (i.e., should this type of traffic movement be allowed to "ratchet" federal interexchange carrier access rates downward. This practice involves carrying both types of traffic on the subject circuit but, in effect, "ratcheting" down the federally tariffed rate, applying special access rates for toll traffic and TELRIC rates for the part that is local.

The Workshop Report at p. 116, properly frames the issue and the equities:

> "This issue is one of balancing efficiency against universal service. No participant denied that WCOM and AT&T's proposed commingling and ratcheting would result in a more efficient use of CLEC networks. However, the FCC, along with most state commissions, has identified universal service as an important regulatory goal. Access charges have been and continue to be an important mechanism for commissions in achieving the goal of universal service. Adoption of SGAT provisions that have the potential to undermine the effectiveness of the current pricing

mechanism for special access requires a more comprehensive review of all Qwest pricing policies and their effect on universal service than has been accomplished in this proceeding."

The Workshop Report analyzed federal statements on the issue and concluded that, at least pending further federal rulings on the subject, ratcheting should not be allowed because of the financial incentive it would give to interexchange carriers to use unbundled network elements (UNE) to bypass special access services. On the issue of whether special access circuits may actually be used for interconnection purposes and because the problem is, at this point, one of pricing policy, the Workshop Report adopted Qwest's proposal to allow the efficiency but avoid the pricing problem by permitting special access circuits to be used for local interconnection but requiring them to be priced as special access circuits. Workshop Report, p. 117.

We agree that this is the best resolution of the issue. A pricing-based moratorium on commingling can be put in place through the use of special access pricing because the problem is not so much with the use of the circuits as with the gaming of pricing in a system in transition. We agree also that the potential for damage to universal service should not be ignored. We therefore find and conclude that it serves the public interest best to accept Qwest's proposal that language to this effect should be in the SGAT, i.e., that competitive local exchange carriers may use spare capacity on existing special access circuits for interconnection so long as they pay special access rates for the facilities.

39. Subject to any pricing, implementation or other considerations that may later be shown to be relevant with respect to reciprocal compensation issues, we will adopt the Workshop Report on this Checklist item as being in the public interest.

Checklist Item 14: Resale

40. Checklist Item 14, Resale, is found at Section 271(c)(2)(B)(xiv) of the federal Act. It requires that access or interconnection offered by a Bell operating company to other carriers include "Telecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)."

41. Thirty-two Resale-related issues were raised and resolved in the workshop process. (Workshop Report, pp. 120-130.) With respect to the eleven issues thereafter remaining in dispute, we note that Qwest (Qwest Comments, pp. 24-25) accepted the Workshop Report decisions on these issues, and that it agreed to make the relevant changes to bring its SGAT into compliance with these decisions. (*See*, Workshop Report, pp. 131-143.) Similarly, AT&T did not challenge any of the eleven disputed Resale issues in its written comments to the Commission. (A numbering error in the Workshop Report, at p. 140, makes it appear that there are ten such issues. There are eleven and we have numbered them correctly for discussion purposes below.)

42. Qwest has implemented the Resale-related language changes detailed in the Workshop Report by amending its SGAT language. Notable among these agreements is Qwest's acquiescence in a general agreement applicable to SGAT signatories that no signatory would engage in marketing to customers of other companies who mistakenly contact the party (i.e., when they are not seeking information from the specific company called). (Conclusion on disputed Resale issue 2, Marketing During Misdirected Calls, Workshop Report, p. 134.) Beyond that, some issues must await the results of the ROC third-party OSS testing process before they can be considered finally resolved. These include, for example:

a. 5. Inaccurate Billing of Resellers;
b. 6. Ordering and Other OSS Issues;

c. 9. Merger-Related PIC Charges.

Some issues are [i] too vaguely raised in the workshop process and may be later identified and dealt with in OSS testing, or [ii] properly left for resolution in the OSS process. We agree with the Consultant that, with respect to either type of issue, the OSS process should be given a chance to resolve them. However, any party may bring up issues which the OSS testing process has failed to resolve at the end of that process. We remind the parties that the burden carried by a participant seeking to reopen an issue or launch a new issue after the OSS testing process is very heavy. Subject to these considerations, we find the Workshop Report and the issue resolutions contained in it with respect to Resale properly balance the interests of the public and carry out the intent of the federal Act. Therefore, we will adopt the Workshop Report's recommendations with regard to Resale issues. Any further finding by the Commission on Qwest's satisfaction of the requirements of Checklist Item 14, Resale, is subject to successful completion of the ROC OSS third party testing and to the successful resolution of any issues identified therein as material to the workshop process.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Qwest shall make timely modifications to its change management process as described hereinabove. Persons adversely affected by the failure of such timely modifications shall bring the situation to the attention of the Commission.

2. Qwest shall make the above-required changes to the terms and conditions of its Statement of Generally Available Terms.

3. We reverse the Workshop Report on Collocation Issue 14, Collocation Intervals. We accept and order Qwest's proposed resolution of this issue, set forth hereinabove, to be made a part of the Wyoming SGAT.

4. The Commission will not, at this time, make any final recommendation concerning Qwest's compliance with Checklist items 1 (Interconnection and Collocation), 11 (Number Portability), 13 (Reciprocal Compensation) or 14 (Resale). Further action by the Commission on a final recommendation regarding compliance is subject to the satisfactory resolution of the issues deferred to other workshops, to the ROC OSS testing proceeding, or to a costing docket, and to such further order of the Commission as it shall deem advisable.

5. This order is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming, on December 4, 2001.

PUBLIC SERVICE COMMISSION OF WYOMING
/s/ Steve Ellenbecker
STEVE ELLENBECKER, Chairman
/s/ Steve Furtney
STEVE FURTNEY, Deputy Chair
/s/ Kristin H. Lee
KRISTIN H. LEE, Commissioner

(SEAL)
Attest:

/s/ Stephen G., Oxley
STEPHEN G. OXLEY, Secretary and Chief Counsel

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION OF QWEST CORPORATION REGARDING RELIEF UNDER SECTION 271 OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996, WYOMING'S PARTICIPATION IN A MULTI-STATE SECTION 271 PROCESS, AND APPROVAL OF ITS STATEMENT OF GENERALLY AVAILABLE TERMS	)	Docket No. 70000-TA-00-599 (Record No. 5924)

FIRST ORDER ON GROUP 5A ISSUES
(Issued January 30, 2002)

This matter is now before the Wyoming Public Service Commission (Commission) for consideration of the Group 5A issues concerning the public interest and the Qwest Performance Assurance Plan (QPAP). The federal Telecommunications Act of 1996, at 47 U.S.C. § 271, sets forth some specific criteria for the nature of the access and interconnection Qwest Corporation (Qwest) must offer to competitors before it is allowed into the in-region interLATA market in Wyoming. We must also determine the extent to which Qwest's Statement of Generally Available Terms (SGAT) for Wyoming provides for the development of a competitive telecommunications market in Wyoming under Sections 251 and 252 (d) and (f) of the federal Act. Overriding considerations in this portion of the proceeding are focused on the broad issues of how Qwest should be expected to perform in a post-271 environment and whether granting it the authority to offer in-region originating interLATA services serves the public interest. The Commission, having reviewed the Workshop Report materials filed in this portion of the proceeding and the written comments and arguments of the parties, having heard oral arguments in open hearing, having reviewed applicable telecommunications utility law and its files concerning this case and the participants, and being otherwise fully advised in the premises, HEREBY FINDS AND CONCLUDES:

1. On October 22, 2001, the consultant retained by the states participating in the Qwest Section 271 multi-state compliance proceeding (the Consultant), with the assistance of state commission staff members, issued his Report on Qwest's Performance Assurance Plan and on the same day issued his Public Interest Report (when referred to collectively, the Workshop Reports) giving recommendations to the participating commissions on the disposition of Group 5A issues in this case.

2. To provide for the full and fair consideration of the Group 5A issues, the Commission, on November 6, 2001, issued its Order Providing for Separate Consideration of Group 5 and Group 5A Issues, and Setting Oral Arguments and Deliberations on Group 5 and Group 5A Issues.

3. Pursuant to due notice, the Commission held oral arguments on Group 5A workshop issues beginning at 9:00 a.m. on December 10, 2001, in the Commission's hearing room in Cheyenne, Wyoming. Qwest and the Consumer Advocate Staff appeared through counsel and participated to the extent they deemed necessary in the proceedings. QSI Consulting participated in the proceeding as consultants and advisors to the Commission.

4. The Commission's deliberation in this portion of the case was held on January 18, 2002 at 2:00 pm, at the Commission's hearing room in Cheyenne, Wyoming, pursuant to its Second Order Rescheduling Deliberations on Group 5A Issues. At the deliberation, the Commission directed the preparation of this order consistent therewith.

The Qwest Performance Assurance Plan

5. The QPAP is intended to provide assurances that Qwest will live up to its obligations under Section 271 if it is allowed to enter the in-region originating interLATA market. We understand from the Federal Communications Commission that it clearly does not expect that all post-entry performance plans, like the QPAP, will be identical:

> "We recognize that states may create plans that ultimately vary in their strengths and weaknesses as tools for post-section 271 authority monitoring and enforcement. We also recognize that the development of performance measures and appropriate remedies is an evolutionary process that requires changes to both measures and remedies over time. We anticipate that state commissions will continue to build on their own work and the work of other states in order for such measures and remedies to most accurately reflect commercial performance in the local marketplace." (Verizon Pennsylvania Order, FCC 01-029, released Sept. 19, 2001, paragraph 128.)

The FCC has also developed a simple and logical set of criteria for evaluating the QPAP and similar plans on a rational and consistent basis. Plans should contain:

- Meaningful and significant incentive to comply with designated performance standards;
- Clearly articulated and predetermined measures and standards encompassing a range of carrier-to-carrier performance;
- Reasonable structure designed to detect and sanction poor performance when and if it occurs;

- A self executing mechanism that does not open the door unreasonably to litigation and appeal; and

- Reasonable assurance that the reported data are accurate.

6. After a review of the Workshop Report on the Qwest QPAP, the transcript of the oral arguments presented to us and other material in the record of this proceeding, including multi-state material, we find that the QPAP in its latest iteration generally satisfies the evaluation criteria for such plans; and we accept and adopt the Workshop Report on the QPAP, except as specifically discussed below. Regarding the nature of the QPAP, it is Exhibit K to the Qwest Wyoming SGAT; and it is designed to give a measure of assurance that Qwest will be adequately motivated to sustain an acceptable level of market openness and fair dealing with competing local service providers after, and if, Section 271 approval is ultimately granted to it. The QPAP is heavily enmeshed in federal and state telecommunications law and public policy and is not, either by itself or as a part of the SGAT, capable of being analyzed merely as a simple contract.

7. Regarding the Workshop Report's recommended 36% cap on payments by Qwest under the QPAP, we find no evidence proving the advisability of a particular cap in terms of a specific percentage or otherwise. Likewise, we find that there has been no demonstration of a reason to place a dollar limit on compensation derived from such a cap. If the reason for a cap is simply to limit Qwest's liability to a certain level which it supports or does not oppose, that is not a sufficient reason for the existence of a particular arbitrary cap. The dynamism of competitive telecommunications markets keeps a fixed cap from being a "meaningful and significant incentive to comply" with performance standards. The artificiality of a cap also introduces many administrative and other complications into the administration of the QPAP. Further, it could focus the behavior of competitors on obtaining compensation rather than concentrating on competing. Not having a cap comes much closer to creating a "reasonable structure designed to detect and sanction poor performance when and if it occurs" and is more apt to function as "a self executing mechanism . . ." which does not rely on the regular intervention of courts, regulators or special masters to make the QPAP function adequately. It is impossible to state that a payment cap would continue into the future to be either "meaningful" or "significant." We can state that a cap would be less so, and Qwest has termed the cap, as proposed by the Consultant, to be "reasonable." (*See*, Qwest's November 7, 2001, Comments on the Facilitator's Final QPAP Report, p. 2.) We note that the purpose of the QPAP is not to limit Qwest's liability for poor performance but to provide incentives discouraging that type of performance.

8. The Workshop Report on the QPAP proposes that some Tier 2 payments, those which go to the states rather than individual companies, begin after a three-month period of non-compliant performance. The Workshop Report analysis also bases Tier 2 payment liability in part on whether or not the prohibited

behavior has a Tier 1 counterpart. Here, the most important decisional criterion is that the QPAP should "detect and sanction poor performance when and if it occurs." Therefore, if certain poor performance violates the QPAP, the penalty should attach at once rather than after a period of time has elapsed. We do not believe that a "meaningful" penalty is created when prohibited behavior is allowed to continue over a period of time before it is penalized. The proper approach here, if there were any objection to Tier 2 payments, would be to object to the characterization of the behavior as prohibited or to object to the level of penalty payment associated with it. We will discuss a QPAP modification process below. We note here our conclusion that Tier 2 payments should be made to the Wyoming Universal Service Fund for the benefit of all Wyoming telecommunications subscribers, whether or not they reside in Qwest service areas. Although the "penalty" value for Qwest would appear to be lessened by this use of the funds, it is appropriate and the beneficiaries are the consumers themselves rather than the companies providing the service.

9. The Workshop Report advocates that payments under the QPAP be allowed to escalate during the period of noncompliance by Qwest to increase the motivation for Qwest to change its behavior. However, the Workshop Report also suggests that the escalation stop after six months, and Qwest supports this additional limitation on its potential QPAP liability. (Workshop Report on the QPAP, p. 44.) We do not believe it is the role of the QPAP to set a price on noncompliance but to encourage it not to happen or to correct such noncompliant behavior if it occurs. Therefore, we do not believe that an arbitrary limit on escalation of payments is warranted or demonstrated to be necessary. Qwest has argued, testified and shown us documentary evidence that it is either meeting its performance indicators or working hard to do so in the future. If this is true, the likelihood of payments under the QPAP is relatively low and should be considered by Qwest as a manageable financial risk largely under its own control. Additionally, we have not been provided with cogent reasons why there should be a limit on the escalation of payments or that a limit of six months is somehow compelled by the facts of the case. We therefore will allow the escalation of QPAP payments without a time limit.

10. The Workshop Report on the QPAP advocates that payment levels should de-escalate after a certain period of corrected performance. The argument seems to be that lowering payment levels should be considered a reward for good behavior by Qwest. We disagree. The actual reward for good behavior should be not having to make payments under the QPAP because Qwest's performance complies with it. The idea of encouraging good behavior and then lessening the payment for bad behavior as a reward for an interim period of good behavior is a perverse incentive. We therefore decide that escalated penalties should be "sticky." That is, once a payment has escalated to a level at which Qwest complies with a provision of the QPAP, that particular payment should remain at that level. Again, compliance should be rewarded and this is the better way to encourage this

behavior. The QPAP should not lend itself to a "cost-benefit" analysis under which the price of noncompliance might be weighed and found by Qwest to be an acceptable cost of doing business.

11. It is possible that litigation between Qwest and a local service competitor could arise if problems could not be otherwise resolved under the QPAP or the SGAT. The QPAP draft removes the ability of a competitor to go into court and sue Qwest for contract damages or damages that could be proven under a contractual theory of liability. It would force the competitor to elect the QPAP as a "liquidated damages" remedy. It would be a mistake to consider the QPAP or the SGAT in general as a simple contract; and it would be a further mistake to require simple precepts of general contract law to limit its effectiveness. The QPAP is a document based on the requirements of federal telecommunications law, and its formation is driven not by a mutual desire to engage in local exchange telecommunications service competition but by the legal requirement that Qwest's local markets be fairly opened to competition. Qwest's goal is not simply to open its local markets but to be allowed into the lucrative in-region interLATA originating long distance market now denied to it by law. Thus the analysis of this case and the QPAP has public policy and public interest dimensions beyond simple contract law. None of the parties to either the Wyoming or the multi-state proceeding could produce evidence showing that there could not be instances in which the QPAP might be an inadequate remedy for unfair, anticompetitive or monopolistic behavior by Qwest. We also do not believe that we, or any of the parties, can foretell the future with sufficient accuracy to say that the QPAP is now a perfect remedy and that it suffices in all cases. Therefore, we will not allow the QPAP to limit the ability of a competitor to go into court on *any* theory of liability or with regard to any element of damages. The avenues to recovery should be open for Qwest and its competitors. Even though QPAP payments should suffice to compensate CLECs, there may be instances in which poor performance by Qwest causes unusually high losses by competitive local exchange carriers. The QPAP and the SGAT should allow CLECs to recover these losses through court action if there is a valid cause of action.

12. We agree with the FCC that the QPAP should be "a self executing mechanism that does not open the door unreasonably to litigation and appeal." This is one of the reasons for our conclusions on payments as stated above. However, we also do not want the QPAP to become simply a profit source for potential competitors. Double recovery, under the QPAP and in court, should not be allowed to happen. Therefore, Qwest should be able to offset against any ordered award any sum it proves to the tribunal to be a valid offset of QPAP payments directly related to the subject matter of the proceeding.

13. The QPAP wisely provides that it should be reviewed every six months but less wisely restricts the issues which can be discussed and least wisely gives

Qwest the power to veto any changes. Our directions in this order make adequate provision for the initial functioning of the QPAP, but we realize that there is much that cannot be known about the future behavior of the dynamic and volatile telecommunications markets. Qwest's reaction to this problem was, *inter alia*, to place limits on its liability and give itself veto power over changes in the QPAP. We do not believe that this is the best course of action. The Commission has only the public interest to look after and is not a partisan force in the process. We have also developed considerable familiarity and experience with the issues so ably presented by the parties to the Wyoming and multi-state Section 271 process. The better model for modification of the QPAP is a proceeding before the Commission which preserves the due process and other rights of the parties and retains the Commission's ability to act in the public interest regarding this document. Reviews of the plan should be made by the Commission in light of Wyoming-specific issues and the subjects which may be addressed should not be circumscribed. This will function as a protection for all parties. For example, if it appears later that competitive local exchange carriers are abusing Qwest under the QPAP or that limits should, *in the light of actual Wyoming experience*, be placed on Qwest's potential obligations, this can be done at that later time. Review should be periodic and the six month interval suffices, but parties should be able to come before the Commission at any time if a serious problem arises. At once, this answers the question of whether Qwest should have to endure unbearable burdens under the QPAP and the question posed by the Consumer Advocate Staff regarding how to plan for a competitive future with so many unknowns and a lack of a Qwest track record on the subject. This ability to bring the document back before the Commission for public proceedings to reform it, in whole or in part, will also help to adjust for situations unique to the Wyoming market, the availability of technological solutions to problems or otherwise in which a lack of performance by Qwest should not be penalized at all because the company is not at fault. This is the type of protection that should be afforded rather than allowing the document to be inflexible. We do not believe that it would be realistic for Qwest to be required to develop a track record before it moves into its desired long distance market, but we also believe that we must therefore make adequate provision so that the QPAP remains a viable tool for the fair encouragement of local service competition -- goals shared by the federal Act and the Wyoming Telecommunications Act of 1995.

14. Because the QPAP is designed to promote good behavior by Qwest in its local markets as the quid pro quo for allowing it to enter the in-region interLATA originating long distance market, we do not believe that it should go into effect until Qwest obtains this authority from the FCC.

The Public Interest

15. 47 U.S.C. § 271(d)(3) lists the findings which the FCC would have to make in order to grant Qwest's request for Section 271 relief once it is filed. 47

U.S.C. § 271(d)(3)(C) requires a finding that "the requested authorization is consistent with the public convenience and necessity." Because this criterion is stated separately from the Section 271 competitive checklist and the other specific things Qwest must prove under the federal Act, it must therefore be read as a separate requirement. We agree with the FCC that this public interest criterion allows a general review of all of the facts and circumstances in the case to see whether the intent that local markets be fairly opened to competition is likely to be frustrated. Qwest does not, in our opinion, have the burden of raising and disproving every possible problem imaginable. Their burden is to provide the demonstrations required by the federal Act, but they need only to rebut any allegations by others as to special problems or circumstances which might warrant not granting the recommendation sought by Qwest here. In general, we agree with the comments of the Consultant in the Workshop Report that Qwest has satisfied the generalized public interest requirement of the federal Act; but this agreement is conditional. It is based in part on the existence of a QPAP consistent with our findings and conclusions above. Our agreement on the public interest issue is also conditioned on a satisfactory showing in the Regional Oversight Committee's independent Operational Support System test and the emergence therefrom of Performance Indicator Definitions (PIDs) satisfactorily identifying and covering the necessary performance by Qwest to show that there are "clearly articulated and predetermined measures and standards encompassing a range of carrier-to-carrier performance."

16. Regarding the public interest issues concerning Unbundled Network Element (UNE) prices and intrastate access charges brought up by the Workshop Report on public interest issues, we agree with the Report that these issues are best left to the states. We also note that the pricing provisions of the Wyoming Telecommunications Act of 1995 have mooted, in Wyoming and at least for the time being, many of the questions raised about overpriced access and the unrealistic relationship of UNE prices to local service prices which exist in some other states.

Further Proceeding on Group 5A Issues

17. The changes which we have directed hereinabove require numerous revisions to various parts of the QPAP to comply with our directives and to remove language rendered superfluous. We will not therefore try to rewrite the QPAP but direct that Qwest do so, starting with its November 6, 2001, draft version of the "Exhibit K" QPAP, and incorporating all of the changes required by this order. Qwest shall thereafter file the revised QPAP with the Commission and serve copies on all parties to the Wyoming proceeding on or before February 28, 2002. With this filing it must also submit conforming changes necessary to bring the SGAT into harmony with the revised QPAP. The Commission will thereafter hold a public hearing on the revised QPAP beginning at 9:00 a.m. on Monday, March 18, 2002, at its hearing room at 2515 Warren Avenue, Suite 300, Cheyenne, Wyoming.

18. Our findings and conclusions hereinabove are supported by the substantial evidence in the record of this proceeding, including evidence adduced in the multi-state proceeding.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. Qwest shall promptly file a changed QPAP conforming to the directives hereinabove and the same shall be considered in public hearing, all at the times appointed hereinabove.

2. Conditioned on the development of a conforming QPAP, proper PIDs and the successful completion of the ROC OSS test, the Commission recommends that Qwest has satisfied the general public interest criteria as described hereinabove.

3. This order is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming, on January 30, 2002.

PUBLIC SERVICE COMMISSION OF WYOMING

/s/ Steve Ellenbecker
STEVE ELLENBECKER, Chairman

/s/ Steve Furtney
STEVE FURTNEY, Deputy Chair

/s/ Kristin H. Lee
KRISTIN H. LEE, Commissioner

(SEAL)
Attest:

/s/ Stephen G., Oxley
STEPHEN G. OXLEY, Secretary and Chief Counsel

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION OF QWEST CORPORATION REGARDING RELIEF UNDER SECTION 271 OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996, WYOMING'S PARTICIPATION IN A MULTI-STATE SECTION 271 PROCESS, AND APPROVAL OF ITS STATEMENT OF GENERALLY AVAILABLE TERMS	)	Docket No. 70000-TA-00-599 (Record No. 5924)

ORDER DENYING PETITION FOR RECONSIDERATION
AND SETTING PUBLIC HEARING AND PROCEDURE
(Issued March 27, 2002)

This matter is now before the Wyoming Public Service Commission (Commission) upon Qwest Corporation's (Qwest) Petition for Reconsideration of the Commission's QPAP Recommendation (the Petition), the written responses thereto filed by [i] AT&T (with Covad Communications), and [ii] Visionary Communications, InTTech Inc. and Netwright, LLC, and the arguments presented by counsel for Qwest, AT&T, the Consumer Advocate Staff of the Commission, Visionary Communications, InTTech Inc., Netwright, LLC, and Contact Communications. We also must consider the procedural effect on this issue and the public hearing hereon of Qwest Corporation's March 15, 2002, Motion to Require Prefiling a Summary of Issues, (the Qwest Motion), the March 22, 2002, Motion of Contact Communications to Require Response to Prefiled Issues (the Contact Communications Motion), the March 26, 2002, response of Qwest to the Contact Communications Motion (the Qwest Response), all filed with respect to the hearing scheduled by the Commission on Wyoming-specific issues remaining in the case. The Commission, having reviewed the Petition, the responses, the pleadings on the Wyoming-specific issues hearing, having heard the arguments of counsel, having reviewed the record in this case, its files concerning the case, applicable Wyoming and federal law, and being otherwise fully advised in the premises, HEREBY FINDS AND CONCLUDES:

1. On January 30, 2002, the Wyoming Public Service Commission (Commission) issued its First Order on Group 5A Issues (the First Order), which directed Qwest to file a revised Qwest Performance Assurance Plan (QPAP) in conformance with that Order on or before February 28, 2002.

2. On February 28, 2002, Qwest filed its Petition asking the Commission to "grant reconsideration" of the First Order. On March 11, 2002, AT&T (with Covad Communications), and Visionary Communications, InTTech Inc. and Netwright, LLC, filed responses in opposition to the Petition. We set the Petition and the responses for

deliberation in our March 14, 2002, Order for Continuance of Hearing (Group 5a Issues) and Scheduling Deliberations.

3. On March 14, 2002, the argument on the Petition was held pursuant to due notice and the order of the Commission, with counsel for Qwest, AT&T, the Consumer Advocate Staff of the Commission, Visionary Communications, InTTech Inc., Netwright, LLC, and Contact Communications appearing and presenting their positions and arguments on the subject.

4. On March 18, 2002, and pursuant to due notice, the Commission deliberated the Petition and directed the preparation of this order consistent therewith. Thereafter, the Commission received the pleadings of parties regarding the Wyoming-specific public hearing in this case, and changed the procedural schedule for that hearing. We must consider and accommodate the effect of these changes in this order.

5. Qwest argued that the Commission's order of January 30, 2002, while styled as an "order," was no more than a "recommendation" with no binding legal effect. We are engaged in reviewing Qwest's compliance with Section 271 of the federal Telecommunications Act of 1996; and it is true that we will make a recommendation to the Federal Communications Commission (FCC) as it considers giving Qwest access to interLATA originating long distance markets in the states where it provides local service. However, according to W.S. §§ 37-2-212 and 37-2-213, our orders must be in writing and we retain continuing jurisdiction to ". . . alter, amend, annul or otherwise modify" them. W.S. § 37-2-102 tells us that "no finding or order of the commission shall be effective without the concurrence of a majority of the commission." This proceeding is of such importance that the Commission will continue, as it has from the very outset of its involvement in this multi-state endeavor, to proceed with its decisions as written orders, evidencing the official action of the Commission, and also evidencing the necessity, as we have also stated repeatedly, of retaining jurisdiction to make certain that the public interest of the people of Wyoming is protected and to modify our orders as needed to accomplish this. Our orders may be examined by the courts and the FCC, but that is not an argument that the Commission is engaged in a casual matter. Most importantly, the argument is immaterial to the final disposition of this matter which is in the hands of the FCC according to the federal Act.

6. Qwest argues that the Commission should not disturb the compromise developed by the facilitator and recommended to us in his report on Group 5A issues. We have found the multi-state workshop process to be a valuable and efficient way of developing issues and better understanding the parties' points of view on them. It is true that Qwest and the other parties to the proceeding have reached compromises on a wide range of issues, and we have accepted the vast majority of them as being well reasoned and serving the pro-competitive policies of the federal Act. However, we have never abdicated our Wyoming regulatory responsibility to a multi-state facilitator and do not believe that it is in our power to do so. The legislature may have delegated some measure of administrative jurisdiction to the Commission; but it has not provided that we may, in turn, delegate it to others. We must decide in the Wyoming public interest

based on the record, and we have done that. *See, In the Matter of the Fair Hearing Request of R.M. & S.M. v. Dept. of Family Services*, 953 P.2d 477, 482 (Wyo. 1998).

7. In its Petition and its oral argument, Qwest argues that we have departed impermissibly from FCC precedent in our January 30, 2002, order on the QPAP, citing instances in which the FCC has approved plans for other states containing the provisions Qwest wants in Wyoming, citing among others, decisions regarding Texas, Kansas and Oklahoma. On the other hand, AT&T, in its response and in oral argument cites a number of cases in which states have reached conclusions different from those cited by Qwest and similar to those made in our January 30, 2002, order. We reiterate here what we said there:

> "5. The QPAP is intended to provide assurances that Qwest will live up to its obligations under Section 271 if it is allowed to enter the in-region originating interLATA market. We understand from the Federal Communications Commission that it clearly does not expect that all post-entry performance plans, like the QPAP, will be identical:
>
> > "We recognize that states may create plans that ultimately vary in their strengths and weaknesses as tools for post-section 271 authority monitoring and enforcement. We also recognize that the development of performance measures and appropriate remedies is an evolutionary process that requires changes to both measures and remedies over time. We anticipate that state commissions will continue to build on their own work and the work of other states in order for such measures and remedies to most accurately reflect commercial performance in the local marketplace." (Verizon Pennsylvania Order, FCC 01-029, released Sept. 19, 2001, paragraph 128.)
>
> "The FCC has also developed a simple and logical set of criteria for evaluating the QPAP and similar plans on a rational and consistent basis. Plans should contain:
>
> - Meaningful and significant incentive to comply with designated performance standards;
> - Clearly articulated and predetermined measures and standards encompassing a range of carrier-to-carrier performance;
> - Reasonable structure designed to detect and sanction poor performance when and if it occurs;
> - A self executing mechanism that does not open the door unreasonably to litigation and appeal; and
> - Reasonable assurance that the reported data are accurate."

Again, we agree with the FCC that the states are engaged in creating monitoring and enforcement tools which may legitimately differ according to local circumstance. We also agree that the FCC's criteria are well reasoned and should apply. We do not, however, agree with Qwest that this somehow forecloses us from considering how best

to apply these criteria to obtain a positive and pro-competitive result for Wyoming. The size, character, composition and physical distribution of Wyoming's telecommunications markets, and the well understood high cost of providing service in the state, are clearly different from those of other states, including those cited by Qwest as being the subject of decisions useful to us for their precedential value. If the FCC's approval of other plans for other states constitutes binding precedent which forecloses our ability to contribute meaningfully to the process, the parameters discussed above are rendered, along with our state-specific process, the multi-state process and large portions of the federal Act, moot and ultimately useless. Regarding the QPAP, we have acted in a manner consistent with the pro-competitive intent of the federal Act and the Wyoming Telecommunications Act of 1995, as well as the clearly pro-competitive intentions expressed by the FCC. We thus agree with Visionary Communications, InTTech Inc. and Netwright, LLC, when they state that Qwest has a remedy before the FCC.

8. Qwest also argues that the QPAP should be viewed as a simple matter of contract law and that competitors signing up to compete under the Wyoming SGAT should have thereby "elected" limits on their remedies. In the January 30, 2002, order, we stated that:

> "The QPAP is heavily enmeshed in federal and state telecommunications law and public policy and is not, either by itself or as a part of the SGAT, capable of being analyzed merely as a simple contract."

This remains true, and the SGAT is not a simple contract. We do not believe that the QPAP should be a source of profit to Qwest's competitors or a device to forestall competition. We do not believe that Qwest should have to pay twice for the same violation of the terms of the SGAT. Nevertheless, we also understand that the participants' knowledge of the future is imperfect and that this is the wrong time for us to foreclose avenues of recovery. The Qwest argument on "liquidated damages" illustrates the point. Qwest states that such contract arrangements have the advantage of liquidating them for *both* parties to the SGAT and that there is "no reasonable basis for requiring one party to take the risk that the payments will exceed actual harm while allowing the other party to avoid the risk that payments will be less than actual harm." (Qwest Petition at p. 18.) However, when pressed for details, Qwest did not offer information which might be used to flesh out this assertion. We thus remain convinced that the better course of action is to let the process go forward with the clear understanding that we are prepared to act swiftly to cure abuses if they arise and certainly before they can do damage. We will not tolerate the use of the QPAP as a tool for abuse by any party. Qwest may obtain from the Commission a fair and expeditious hearing, just as any other signatory might.

9. The other QPAP provisions required by the Commission and discussed in the January 30, 2002, order similarly address the well reasoned criteria of the FCC which they will apply in evaluating the QPAP and similar performance plans for their effectiveness in securing continued good performance by Qwest under the SGAT. Similarly, they may be the subject of further consideration if they begin to operate

oppressively with respect to any signatory and therefore cease to serve the interests of the people of Wyoming.

10. Qwest also questions our decision in light of the role of QSI Consulting in this case, arguing that it worked in New Mexico for an advocacy staff and in Wyoming for the Commission and that this "tainted" our decision here. QSI's open and public participation throughout the multi-state process in Wyoming raised no issues for Qwest in the past; and we observe that the opinions offered by QSI in the two instances cited by Qwest appear to be quite similar. Qwest does not seek a reexamination of the more than 150 issues on which QSI suggested that the facilitator's report or a Qwest position contrary to a suggestion by the facilitator should be approved by the Commission. Additionally, as we stated in the January 30, 2002, order on the QPAP, our decision was based on the evidence, and sometimes the lack of evidence, in the record before us. It is important to emphasize that we could reach the same result in the absence or the presence of QSI.

11. Qwest suggested, in the above described Qwest Response, that the QPAP hearing should be reset for May 3, 2002. At our March 26, 2002, regular open meeting and pursuant to due notice, we heard argument on the various pleadings concerning the Wyoming-specific issues and decided that, in fairness to the parties wishing to participate in either hearing, that the further examination of the QPAP should take place, as suggested by Qwest, beginning on May 3, 2002.

12. The legal standard which the Commission must apply is relatively simple, straightforward and discretionary. W.S. § 37-2-214 allows any interested person to petition for a rehearing with respect to any matter determined in an order of the Commission. The Commission ". . . shall grant and hold such rehearing if in its judgment *sufficient reason therefor* be made to appear, which rehearing shall be subject to such rules as the commission may prescribe." [Emphasis added.] Section 116 of the Commission's Rules furnishes further guidance on the procedure to be followed in the case of a rehearing. Rule 116(b)(ii) calls for a petitioning party to furnish a statement of the facts and law relied upon; and Section 116 (e) of the Commission's rules states, in part, that:

> ". . . the Commission will give consideration to such applications and any answers thereto that may be filed and will make such decision and order as appears to be warranted. . . ."

Taken together, these Rule provisions clarify the procedure to be followed but do not change the statutory standard, which is made applicable to telecommunications matters by W.S. § 37-15-408 in the Wyoming Telecommunications Act of 1995. This is an intentionally general standard which allows the Commission to exercise its discretion in granting or disallowing rehearings. This standard does not require that there be a legal issue or significant new evidence that was not considered previously which would change the outcome of the case if it were to be considered. The Commission may legitimately consider a petition for rehearing if its subject matter has been "determined" in the Commission's relevant order. Our paramount concern must be for the public interest of the people of Wyoming with the desires of the utility (or in

this case, telecommunications company) being secondary, as the Wyoming Supreme Court has unambiguously stated in *Tri County Tel. v. Public Service Com'n*, 11 P.3d 938,941 (Wyo. 2000).

13. Although styled as a Petition for Reconsideration, we chose to treat Qwest's Petition as an application for rehearing under W.S. § 37-2-214, which it most closely resembles. Consequently, we apply the described statutory standard to our consideration of this Petition.

14. We have been asked, essentially, either to hear the same evidence again or simply to change our decision to conform with the desires of a party to this proceeding. Qwest has not offered the Commission grounds for a reexamination of its order of January 30, 2002. What we said there remains true, and we understand that the QPAP must remain a work in progress with refinements still to be made, if needed, swiftly, but on the basis of experience.

15. We conclude that sufficient reason to grant a rehearing -- or a "reconsideration" -- as described in Qwest's Petition has not been made to appear and that the rehearing or reconsideration is not warranted.

16. The changes we directed in the January 30, 2002, order require revisions to the QPAP; and we again direct that Qwest make those changes, using its November 6, 2001, draft version of the "Exhibit K" QPAP as a starting point. Qwest shall thereafter file the revised QPAP with the Commission and serve copies on all parties to the Wyoming proceeding on or before April 16, 2002. It should include in its filing conforming changes necessary to bring the SGAT into harmony with the revised QPAP.

17. By our March 27, 2002, Order Rescheduling Public Hearing and Revising Procedure (Wyoming-specific Issues), issued on March 27, 2002), we set a public hearing on Wyoming-specific issues for May 6, 2002, at Cheyenne. To allow for a full consideration of the QPAP and for efficiency in accommodating the revised procedural schedule in this other hearing, we will consider the revised QPAP at a public hearing beginning at 9:00 a.m. on May 3, 2002, at the Commission's hearing room at 2515 Warren Avenue, Suite 300, Cheyenne, Wyoming. The purpose of the QPAP hearing will be to examine the revised QPAP and the extent to which it embodies the Commission's decision in this case.

18. Our findings and conclusions hereinabove are supported by the substantial evidence in the record of this proceeding, including, without limitation the pleadings in this case, the specific and credible responses filed in opposition to the Petition and the arguments thereon, and the evidence developed in the multi-state proceeding.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Petition of Qwest is hereby denied. The further filings by Qwest and the public hearing described hereinabove shall be done as specified above.

2. The decision of the Commission embodied in the January 30, 2002, order is hereby expressly reconfirmed.

3. Previous orders of the Commission in this proceeding are hereby deemed amended, but only to the extent necessary to give full effect to this order.

4. This order is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming, on March 27, 2002.

PUBLIC SERVICE COMMISSION OF WYOMING

/s/ Steve Ellenbecker
STEVE ELLENBECKER, Chairman

/s/ Steve Furtney
STEVE FURTNEY, Deputy Chair

/s/ Kristin H. Lee
KRISTIN H. LEE, Commissioner

(SEAL)
Attest:

/s/ Stephen G., Oxley
STEPHEN G. OXLEY, Secretary and Chief Counsel

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION OF QWEST CORPORATION REGARDING RELIEF UNDER SECTION 271 OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996, WYOMING'S PARTICIPATION IN A MULTI-STATE SECTION 271 PROCESS, AND APPROVAL OF ITS STATEMENT OF GENERALLY AVAILABLE TERMS	)	Docket No. 70000-TA-00-599 (Record No. 5924)

ORDER ON GROUP 3 WORKSHOP ITEMS: EMERGING SERVICES
(Issued April 3, 2002)

This matter is now before the Wyoming Public Service Commission (Commission) for consideration of the degree to which Qwest Corporation (Qwest) has successfully addressed issues concerning "emerging services" as it seeks to demonstrate compliance with 47 U.S.C. § 271 and related provisions of the federal Telecommunications Act of 1996 (the federal Act) to obtain a recommendation from the Commission to the Federal Communications Commission (FCC) on whether or not Qwest should be allowed to offer originating in-region interLATA services in Wyoming. The emerging services considered here are a group of important services and related issues which gained importance after the passage of the federal Act and which are critical elements of a fairly and completely opened Qwest local exchange market as envisioned by the federal Act. The major emerging services topic areas are [i] line sharing, [ii] subloop unbundling, [iii] packet switching and [iv] dark fiber. The federal Act, at 47 U.S.C. § 271(c)(2)(B), sets forth criteria for the nature of the access and interconnection Qwest must offer to competitors before it is allowed into the in-region interLATA market in Wyoming. Emerging Services became a part of the above-captioned proceeding as a result of unbundling requirements decided upon by the FCC in its November 5, 1999, UNE Remand Order and its December 9, 1999, Line Sharing Order. We must consider the extent to which Qwest provides fair and open access by local service competitors to emerging services; and we must also determine the extent to which Qwest's Statement of Generally Available Terms (SGAT) for Wyoming, regarding emerging services, provides for the development of a competitive telecommunications market in Wyoming under Sections 251 and 252 (d) and (f) of the federal Act. The Commission, having reviewed the Report to the Wyoming Public Service Commission in this portion of the proceeding and the written comments and arguments of the parties, having heard oral arguments in open hearing, having reviewed applicable telecommunications utility law and its files concerning both

this case and the participants, and being otherwise fully advised in the premises, HEREBY FINDS AND CONCLUDES:

1. On June 11, 2001, the consultant retained by the states participating in the Qwest Section 271 multi-state compliance proceeding (the Consultant), with the assistance of state commissions staff members, filed with the Commission his Report on Emerging Services (the Workshop Report) giving recommendations to the commissions on the disposition of Group 3 issues in this case.

2. Pursuant to due notice, including our order issued herein on July 13, 2001, the Commission held oral arguments on Group 3 workshop issues beginning at 9:00 a.m. on July 27, 2001, in the Commission's hearing room in Cheyenne, Wyoming. Qwest and the Consumer Advocate Staff appeared through counsel and participated to the extent they deemed necessary in the proceedings. QSI Consulting participated in the proceeding as consultants and advisors to the Commission.

3. Pursuant to due notice, the Commission deliberated the emerging services issues on September 5, 2001, at its hearing room in Cheyenne, Wyoming, and thereafter directed the preparation of an order consistent with their decision.

4. Regarding Line Sharing, the workshop process resolved six issues (Collocating DSLAMs, Direct connections option, Requiring separate CLEC "MELD" runs, Allowing for direct connection in common areas, Line sharing cost elements, and Line splitting). The Workshop Report left four disputed issues to the Commission for further resolution. These disputed issues were:

a. Ownership of and access to splitters;
b. Tying Qwest data service and voice service;
c. Line sharing over fiber loops; and
d. Provisioning intervals.

One of the major points of contention regarding line sharing concerned the tying by Qwest of data service and voice service. The Workshop Report characterizes the tying issue as ". . . Qwest's decision to withdraw from customers its Megabit service where a CLEC uses sharing to provide xDSL services across a loop's high frequency portion. Qwest's policy not to continue to offer its Megabit services when a CLEC captures a customer for voice services gives grounds for concern." Later, the Workshop Report confirmed that the antitrust issue in this situation was not paramount, but that, when the issue is viewed against the correct standard (the federal Act's requirement to open markets and to promote competition in an industry whose infrastructure is dominated by ILECs):

> "Qwest should not be considered to be in compliance with public interest requirements as long as it maintains a policy of denying its end users Qwest's own Megabit or xDSL services

when it loses a voice customer to a CLEC through line sharing." (Workshop Report, p. 17.)

We likewise find this to be a very serious issue, and we are therefore pleased that Qwest, at the oral arguments in this phase of the Wyoming proceeding, confirmed that the policy of Qwest regarding the tying of voice and data services was no longer applicable to either residential or business customers, the only remaining limitations being the technical limitations caused by the physical makeup of the loop in question. (*See, e.g.*, Transcript of Group 3 oral argument, hereinafter Tr., p. 78.)

5. Regarding Subloop Unbundling, the workshop process resolved seven issues (Subloop definition, Unbundling all loop types, Spectrum restrictions, Subloop ordering information, Rights of way, Dispute resolution, and Copper feeder and fiber subloops). The Workshop Report left seven disputed issues to the Commission for further resolution. These disputed issues were:

a. Subloop access at MTE terminals;
b. Requiring LSRs for access to premise wiring at MTEs;
c. CLEC facility inventories;
d. Determining ownership of inside wire;
e. Intervals;
f. Requirement for Qwest-performed jumpering at MTEs; and
g. Expanding explicitly available subloop elements.

6. The Workshop Report deferred two issues concerning Subloop Unbundling for determination outside of the Group 3 workshop process, those being Undefined rates, and Pricing for overly broad definitions of subloop categories. Both of these are pricing-specific issues for which an effective "conceptual" treatment in the SGAT through this workshop proceeding would be virtually impossible. We agree that these issues should be deferred and examined in the context of the more general and comprehensive consideration of UNE prices and pricing components in Qwest's TELRIC cost docket now pending before the Commission.

7. Regarding Packet Switching, the workshop process resolved eight issues (Defining packet switching, Defining the condition regarding no CLEC collocation of DSLAMs, Access at any feasible point, Availability of CLEC-specified packet switching options, Limiting access to packet management systems, Separate rate elements for packet switching components, Satisfying the condition relating to DSLAM collocation denial, and Maintenance and repair responsibilities). It left five disputed issues to the Commission for further resolution. These disputed issues were:

a. Availability of spare copper loops;
b. Denial of DSLAM collocation;
c. ICB pricing;
d. Unbundling conditions as a prerequisite to ordering; and
e. Line card "plug and play."

8. Regarding Dark Fiber, the workshop process resolved eight issues (Dark fiber forecasts, Access to dark fiber without collocation, Testing, Addition of E-UDF rate elements, Purchase of a single dark fiber strand, Provisioning and ordering processes, Dark fiber at collocation build-out completion, and Cross connect charges). It left four disputed issues to the Commission for further resolution. These disputed issues were:

a. Affiliate obligations to provide access to dark fiber;
b. Access to dark fiber in joint build arrangements;
c. Applying a local exchange usage requirements to dark fiber; and
d. Consistency with technical publications.

9. Qwest displayed a constructive and positive attitude in its June 22, 2001, Comments to the Commission on the Workshop Report. Qwest, in the final analysis, confirmed its full acceptance of the Workshop Report's findings and recommendations. It lodged no challenges to the Workshop Report and promptly submitted an updated and conforming Wyoming SGAT reflecting the Workshop Report's recommendations and conclusions on Group 3 issues.

10. On the basis of the Wyoming and multi-state record and our consideration of the arguments of the parties to this proceeding, we find that Qwest has shown general compliance with Group 3 workshop issues, subject to the successful completion of the Regional Oversight Committee's independent third party testing of Qwest's Operations Support System (the ROC OSS test) and the Performance Measures Audit as it is associated with Group 3 issues.

11. We believe that the ROC OSS testing process is the proper venue for the resolution of performance issues related to Group 3 items. This does not mean that we believe that any party should be foreclosed from raising issues which the OSS testing process fails to resolve. We remind the parties that the burden carried by a participant seeking to reopen an issue or launch a new issue after the conclusion of the ROC OSS process is very heavy. Subject to these considerations, we find the Workshop Report and the conclusions and issue resolutions contained in it properly balance the interests of the public and carry out the intent of the federal Act. Therefore, we will adopt the Workshop Report's recommendations with regard to Group 3 Emerging Services issues. Any further determination by the Commission on Qwest's satisfaction of the requirements related to Group 3 issues in this proceeding is expressly subject to successful completion of the ROC OSS test,

the Performance Measures Audit and to the successful resolution of any issues identified therein which are material to this phase of the workshop process. In accepting the findings, conclusions and recommendations in the Consultant's Workshop Report, we determine that the substantial evidence of record supports our decision.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Qwest shall make any further necessary changes to the terms and conditions of its Statement of Generally Available Terms to comply with this decision as Group 3 issues are clarified by the ROC OSS and Performance Measures Audit processes.

2. Subject to the successful completion of the ROC OSS process and the Performance Measures Audit described hereinabove, and subject to the successful implementation of any corrective measures as identified therein, the Commission is prepared to make a recommendation to the Federal Communications Commission that Qwest is in compliance with regard to Group 3 issues regarding Emerging Services.

3. Further action by the Commission on a final recommendation regarding compliance is subject to the satisfactory resolution of the issues deferred to the ROC OSS testing proceeding and the Performance Measures Audit, and to such further order of the Commission as it shall deem advisable.

4. This order is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming, on April 3, 2002.

PUBLIC SERVICE COMMISSION OF WYOMING

/s/ Steve Furtney
STEVE FURTNEY, Deputy Chair

/s/ Kristin H. Lee
KRISTIN H. LEE, Commissioner

(SEAL)
Attest:

/s/ Stephen G., Oxley
STEPHEN G. OXLEY, Secretary and Chief Counsel

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION OF QWEST CORPORATION REGARDING RELIEF UNDER SECTION 271 OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996, WYOMING'S PARTICIPATION IN A MULTI-STATE SECTION 271 PROCESS, AND APPROVAL OF ITS STATEMENT OF GENERALLY AVAILABLE TERMS	Docket No. 70000-TA-00-599 (Record No. 5924)

ORDER ON GROUP 4 WORKSHOP ITEMS: UNBUNDLED NETWORK ELEMENTS
(Issued April 12, 2002)

This matter is now before the Wyoming Public Service Commission (Commission) for consideration of the degree to which Qwest Corporation (Qwest) has successfully addressed issues concerning unbundled network elements (UNEs) as it seeks to demonstrate compliance with 47 U.S.C. § 271 and related provisions of the federal Telecommunications Act of 1996 (the federal Act) to obtain a recommendation from the Commission to the Federal Communications Commission (FCC) on whether or not Qwest should be allowed to offer originating in-region interLATA services in Wyoming. The federal Act, at 47 U.S.C. § 271(c)(2)(B), sets forth criteria for the nature of the access and interconnection Qwest must offer to competitors before it is allowed into the in-region interLATA market in Wyoming. Among them are the Group 4 workshop issues, concerning unbundled network elements, consisting of those competitive checklist items 2, 4, 5 and 6 found in the federal Act at subsections 271(c)(2)(B)(ii), (iv), (v) and (vi) which state:

> "(ii) Nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1).
>
> "(iv) Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.
>
> "(v) Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.
>
> "(vi) Local switching unbundled from transport, local loop transmission, or other services."

The UNE requirements of the federal Act are more fully explained in Section 251(c)(3) which states that incumbent local exchange carriers, like Qwest, have the duty

> ". . . to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service."

Section 252(d)(1) of the federal Act sets out the pricing criteria which must be observed regarding UNEs. Additionally, many of the issues involved were articulated and focused originally by two orders of the FCC: [i] the First Report and Order in CC Dockets No. 96-98 and 95-185, released August 8, 1996, regarding the local competition provisions of the federal Act (the *Local Competition Order*) and [ii] the Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, released November 5, 1999, also dealing with competition provisions of the federal Act (the *UNE Remand Order*).

We must consider the extent to which Qwest provides fair and open access by local service competitors to unbundled network elements; and we must also determine the extent to which Qwest's Statement of Generally Available Terms (SGAT) for Wyoming, regarding unbundled network elements, provides for the development of a competitive telecommunications market in Wyoming under Sections 251 and 252 (d) and (f) of the federal Act. The Commission, having reviewed the Report to the Wyoming Public Service Commission in this portion of the proceeding and the written comments and arguments of the parties, having heard oral arguments in open hearing, having reviewed applicable telecommunications utility law and its files concerning both this case and the participants, and being otherwise fully advised in the premises, HEREBY FINDS AND CONCLUDES:

1. On August 20, 2001, the consultant retained by the states participating in the Qwest Section 271 multi-state compliance proceeding (the Consultant), with the assistance of state commissions staff members, filed with the Commission his Report on Unbundled Network Elements (the Workshop Report) giving recommendations to the commissions on the disposition of Group 4 issues in this case.

2. Pursuant to due notice, including our August 24, 2001, Order Revising Group 4 Procedural Schedule and Setting Oral Arguments and Deliberations, the Commission held oral arguments on Group 4 workshop issues beginning at 9:00 a.m. on October 9, 2001, in the Commission's hearing room in Cheyenne, Wyoming. Qwest

and the Consumer Advocate Staff appeared through counsel and participated to the extent they deemed necessary in the proceedings. QSI Consulting participated in the proceeding as consultants and advisors to the Commission.

3. Pursuant to due notice, including the October 25, 2001, Order Rescheduling Group 4 Deliberations, the Commission deliberated unbundled network elements issues beginning at 1:30 p.m. on November 2, 2001, at its hearing room in Cheyenne, Wyoming, and thereafter directed the preparation of an order consistent with their decision.

4. The workshop process yielded the following disposition of issues concerning Checklist Item 2 – Access to Unbundled Network Elements (UNEs):

a. Issue deferred to a later workshop: the Bona Fide Request Process.

b. UNEs considered generally:

i. Issues resolved in the Group 4 workshop process (15):
Definitions, Changes in law regarding access to UNEs, General obligation to provide UNE access, UNE use restrictions, UNE demarcation points (payment for Interconnection Tie Pairs), UNE testing, UNE provisioning intervals, Notice of changes affecting UNE transmission parameters, UNE rates, Miscellaneous charges, Construction charges for ancillary and finished services, Unbundled customer controlled rearrangement element (UCCRE), UNE demarcation points (demarcation point for each UNE), Access to newly available UNEs and UNE combinations, and Information access when customers change service providers.

ii. Issues decided in earlier multi-state workshops (3):
Including LIS in the definition of finished services, Marketing during misdirected calls, and Regeneration charges.

iii. Disputed issues for Commission resolution (3):
Construction of new UNEs, Commingling UNEs and tariffed services on the same facilities, and OSS testing.

Regarding the issue of Commingling UNEs and tariffed services on the same facilities, we note that Qwest has proposed compliant language in the SGAT filed with its August 30, 2001, Comments to the Commission on the Workshop Report developed in Group 4 (the Comments). However, in keeping with the "allowed unless specifically prohibited" treatment regarding commingling by competitive local exchange carriers, we believe that the language of subsection 9.23.1.2.3 is too restrictive in applying only to DS1 loops and failing to include other high capacity

loops. We therefore direct that the highlighted language below be added to this subsection of Qwest's Wyoming SGAT:

> "9.23.1.2.3 Where a CLEC has been denied access to a DS1 or other high capacity Loop as a UNE due to lack of facilities, ..."

c. UNE Platform (UNE-P) and other combinations:

i. Issues resolved in the Group 4 workshop process (18):
Availability of switch features with UNE-Platforms, Features available with UNE-P-PBX, UNE-P-DSS, and UNE-P-ISDN, Migrating from Centrex services to UNE-P, High speed data with UNE-P-POTs and UNE-P-ISDN, Converting from resale to UNE-P, Definition of access, Restrictions on UNE combinations, Use restrictions, Combining Qwest-provided UNEs with other elements or services, Non-separation of combined elements, "Glue" charges for combinations, Ordering equipment ancillary to UNE combinations, Restricting available UNE combinations, Loop and multiplexing combinations, CLEC loop terminations, UNE combination forecasts, Nonrecurring charges, and Delays from loading CLEC billing rates into Qwest's systems.

5. The workshop process yielded the following disposition of issues concerning Checklist Item 4 – Access to Unbundled Loops:

a. Loop issues deferred to later workshops (2):
Accepting loop orders with "minor" address discrepancies, and Resolving conflicts between the SGAT and parallel documents.

b. Loops:

i. Issues resolved in the Group 4 workshop process (34):
Definition of loop demarcation point, Digital versus digital-capable loops, Parity in providing unbundled loops, Limiting available analog loop frequency, Method for providing unbundled IDLC loops, Choosing loop technology types, CLEC authorization for conditioning charges, Access to loop features, functions, and capabilities, Offering high capacity and fiber loops on an individual case basis (ICB), Charges for unloading loops, Extension technology to give loops ISDN functionality, DS1 and DS3 loop specifications, Access to digital loops where available, Loop installation process, Coordinated installation, Limits on loop testing costs, Obtaining multiplexing for unbundled loops, Transmission parameters, CLEC/end user disagreements about disconnecting or connecting loops, Qwest access to Qwest facilities on CLEC customer premises, Points of CLEC access to unbundled loops, Relinquishing loops on loss of end use customers, CLEC right to select from available loop technologies, Miscellaneous charges, Installation hours, Unforecasted out-of-hours coordinated loop installations, Overtime for out-of-hours

installations, Proofs of authorization, ICB intervals for large loop orders, Firm order confirmations, Conditions excusing compliance with loop installation intervals, Maintenance and repair parity, Specifying repair intervals in the SGAT, and Responsibility for repair costs.

ii. Disputed issues for Commission resolution (9):
Standard loop provisioning intervals, Loop provisioning and repair intervals, Reciprocity of trouble isolation charges, Delays in the roll-out of ADSL and ISDN capable loops, Cooperative testing problems, Spectrum compatibility, Conditioning charge refund, Pre-order mechanized loop testing, and Access to LFACs and other loop information databases.

With respect to the issue of NC/NCI codes on LSRs, we note that the Workshop Report stated, at p. 61, that :

> ". . . the SGAT Section 9.2.6.2 provision requiring submission of the information on LSRs (or equivalent ordering document) is appropriate. However, it should be made clear, in a manner consistent with other SGAT treatment of confidential or proprietary information, that the NC/NCI information is sensitive, that its use must be limited to spectrum management purposes, and that only those needing to know the information for that purpose shall have access to it."

We accept the SGAT language changes proposed by Qwest in its Comments as a fair and reasonable implementation of this provision of the Workshop Report.

c. Line Splitting:

i. Issues resolved in the Group 4 workshop process (4):
Presumptions about the "lead" CLEC, Pre-provisioning of the splitter in the end user's central office, Limits on uses of the high- and low-frequency loop Portions, and Charges for OSS Modifications.

ii. Issues decided in earlier multi-state workshops (2):
Line-at-a-time access to splitters, and Discontinuing Megabit service.

iii. Disputed issues for Commission resolution (2):
Limiting line sharing to UNE-P, and Liability for actions by an agent.

d. Network Interface Devices (NIDs):

i. Issues resolved in the Group 4 workshop process (7):
Access to all NID features, Smart and MTE NIDs, Availability of NIDs when CLEC provides loop distribution, Other kinds of permissible NID access, NID ownership, Rates for other than single-tenant NIDs, and NID ordering documents,

ii. Disputed issues for Commission resolution (3):
"NID" definition and access to terminals where Qwest owns facilities in the direction of the end user, Protector connections, and CLEC use of Qwest's NID protector without payment.

6. The workshop process yielded the following disposition of issues concerning Checklist Item 5: Access to Unbundled Local Transport:

a. Transport:

i. Issues resolved in the Group 4 workshop process (3):
Available dedicated transport routes, Requiring multiplexers for access to transport, and Cross connecting UDIT and EUDIT.

ii. Issues decided in earlier multi-state workshops (2):
Access to the facilities of Qwest affiliates, and Access to dark fiber in Qwest's joint-build arrangements.

iii. Disputed issues for Commission resolution (4):
SONET add/drop multiplexing, UDIT/EUDIT distinction, Commingling UNEs and interconnection trunks, and Applying local use restrictions to unbundled transport.

b. Enhanced Extended Links (EELs):

i. Issues resolved in the Group 4 workshop process (3):
Waiver of local use requirements for particular EELs, Ways of meeting the local use requirements, and Audits of local use certifications.

ii. Disputed issues for Commission resolution (5):
Limiting local use requirements to existing special access circuits, Allowing commingling where Qwest refuses to construct UNEs, Waiver of termination liability assessments for EELs, Waiving local use restrictions on private lines purchased in lieu of EELs, and Counting ISP traffic toward local use requirements.

7. The workshop process yielded the following disposition of issues concerning Checklist Item 6: Access to Unbundled Local Switching:

a. Issues resolved in the Group 4 workshop process (7):
Specifying additional types of switch access, Availability of switch features, Unbundling switch Centrex management and control features, Notice of switch changes and upgrades, Unbundling tandem switches, Definition of tandem switching element, and Tandem-to-tandem connections.

b. Disputed issues for Commission resolution (4):
Access to AIN-provided features, Exemption from providing access to switching in large metropolitan areas, Basis for line counts in applying the four-line exclusion, and Providing switch interfaces at the GR-303 and TR-008 level.

8. Qwest again displayed a constructive and positive attitude in its Group 4 Comments. Qwest fully accepted the Workshop Report's findings and recommendations without lodging any challenges to the Workshop Report. It promptly submitted an updated and conforming Wyoming SGAT reflecting the Workshop Report's recommendations and conclusions on Group 4 issues.

9. We believe that the Regional Oversight Committee's independent third party testing of Qwest's Operations Support System (the ROC OSS testing process) is the proper primary venue for the resolution of remaining performance issues related to Group 4 items. This does not mean that we believe that any party should be foreclosed from raising issues which the OSS testing process fails to resolve. We remind the parties that the burden carried by a participant seeking to reopen an issue or launch a new issue after the conclusion of the ROC OSS process is very heavy. Subject to these considerations, we find the Workshop Report and the conclusions and issue resolutions contained in it properly and fairly balance the interests of the public and carry out the intent of the federal Act. Therefore, we will adopt the Workshop Report's recommendations with regard to Group 4 UNE issues. Any further determination by the Commission on Qwest's satisfaction of the requirements related to Group 4 issues in this proceeding is expressly subject to successful completion of the ROC OSS test, the Performance Measures Audit and to the successful resolution of any issues identified therein or in our examination of Wyoming-specific issues, now set to begin on May 6, 2002, which are material to this phase of the workshop process. In accepting the findings, conclusions and recommendations in the Consultant's Workshop Report, we determine that the substantial evidence of record supports our decision. Included in this evidence are Qwest Exhibits 1 and 2 presented and discussed at the October 9, 2001, hearing. These exhibits contain Wyoming-specific data for Checklist Item 4 (Exhibit 1) and regional performance data for several Group 4 checklist items (Exhibit 2). These exhibits, and the monthly filings of updated Wyoming-specific and regional performance data made by Qwest thereafter will assist us in our review and assessment of the ROC OSS final report regarding Qwest's performance in Wyoming.

10. On the basis of the Wyoming and multi-state record and our specific consideration of the Wyoming filings and arguments of the parties to this proceeding, we find that Qwest has demonstrated general compliance with Group 4 workshop issues associated with checklist items 2, 4, 5 and 6, including satisfactory resolution of the issues identified by the Consultant as "disputed" in the Workshop

Report, subject, at this point only to the successful completion of the ROC OSS test and the Performance Measures Audit as it is associated with Group 4 issues. Based on this record, we accept the Workshop Report's conclusions, as described hereinabove, that certain issues have been satisfactorily resolved earlier in the multi-state process. We also accept the Workshop Report's reference of certain issues to later workshops for resolution in the proper and more efficient context. Because these issues will be considered later in the process, we need not tie our conclusions about Group 4 issues to their resolution.

11. We are separately undertaking our consideration of Qwest's unbundled network element pricing in Docket No. 70000-TA-01-700, wherein Qwest has sought to establish total element long run incremental cost (TELRIC) based pricing for its UNE and interconnection offerings. We do not believe that a further consideration of those prices in the instant proceeding would be particularly productive. The pricing regimen which Qwest is legally bound to apply to UNEs and interconnection is clearly delineated in Section 252(d)(1) of the federal Act; and we are satisfied that this pro-competitive pricing standard must produce prices which do not erect barriers to competition but which fairly reflect TELRIC costs and which, therefore, should also provide an adequate basis for Qwest's operations as it begins its performance under the SGAT and the attendant Qwest Performance Assurance Plan. Therefore, we will make no special provisions in this order regarding UNE pricing.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Qwest shall make any further necessary changes to the terms and conditions of its Statement of Generally Available Terms to comply with this decision and as Group 4 issues are clarified by the ROC OSS and Performance Measures Audit processes.

2. Subject to the successful completion of the ROC OSS process and the Performance Measures Audit described hereinabove, and subject to the successful implementation of any corrective measures as identified therein, the Commission is prepared to make a recommendation to the Federal Communications Commission that Qwest is in compliance with regard to Group 4 issues regarding UNEs.

3. Further action by the Commission on a final recommendation regarding compliance is subject to the satisfactory resolution of the issues deferred to the ROC OSS testing proceeding and the Performance Measures Audit, and to such further order of the Commission as it shall deem advisable.

4. This order is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming, on April 12, 2002.

PUBLIC SERVICE COMMISSION OF WYOMING

/s/ Steve Ellenbecker
STEVE ELLENBECKER, Chairman

/s/ Steve Furtney
STEVE FURTNEY, Deputy Chair

/s/ Kristin H. Lee
KRISTIN H. LEE, Commissioner

(SEAL)
Attest:

/s/ Stephen G., Oxley
STEPHEN G. OXLEY, Secretary and Chief Counsel

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION OF QWEST CORPORATION REGARDING RELIEF UNDER SECTION 271 OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996, WYOMING'S PARTICIPATION IN A MULTI-STATE SECTION 271 PROCESS, AND APPROVAL OF ITS STATEMENT OF GENERALLY AVAILABLE TERMS	)	Docket No. 70000-TA-00-599 (Record No. 5924)

ORDER ON AT&T MOTION TO REOPEN PROCEEDINGS
(Issued June 18, 2002)

This matter is now before the Wyoming Public Service Commission (Commission) upon [i] AT&T Communications of the Mountain States, Inc.'s (AT&T) Motion to Reopen Proceedings (the AT&T Motion); [ii] the Opposition thereto by Qwest Corporation (the Qwest Opposition); and the Reply of AT&T to the Qwest Opposition (the AT&T Reply). The Commission, having reviewed the pleadings in the above-captioned case and its files concerning the matter, having heard the oral arguments of parties to this case thereon, having reviewed applicable Wyoming and other telecommunications utility law, and being otherwise fully advised in the premises, HEREBY FINDS and CONCLUDES:

1. On May 14, 2002, AT&T filed the AT&T Motion, seeking therein to reopen, or, as alternatively argued to have the Commission keep open, its proceedings in the above-captioned case to take further evidence on what it termed "secret deals" -- contracts between Qwest Corporation (Qwest) and other competitive local exchange carriers alleged to have been wrongfully withheld from state regulatory commissions. In its Motion, AT&T described a complaint before the Minnesota Public Utilities Commission which alleged that Qwest failed to file eleven agreements between it and various competitive local exchange carriers. The complaint alleged a violation of the federal Telecommunications Act of 1996 because the agreements constituted interconnection agreements which should have been filed by Qwest for formal public approval by the Minnesota Public Utilities Commission. AT&T urged us to reopen proceedings in Wyoming to take further evidence on these agreements because, AT&T argued, Qwest's actions violate federal law, they show an inability or unwillingness to provide interconnection to competitive local exchange carriers on a nondiscriminatory basis, and they, in effect, bought the silence of critics in the Qwest's 271 compliance proceedings. The AT&T Motion did not point to any specific acts or agreements of concern in Wyoming but urged further proceedings to discover any harm accruing in Wyoming. AT&T's Motion asserted that Qwest had a duty under federal law to file the agreements and seek our approval for them.

2. On May 30, 2002, AT&T filed the AT&T Reply, arguing that AT&T would enter the Wyoming market when feasible, that a standard defining agreements which should be filed exists, and that the Commission should apply a standard, even if a uniform federal standard does not exist. AT&T urged the Commission to hold an investigation and to do so in the above-captioned proceeding rather than separately to develop evidence on agreements which "may have hindered or otherwise affected" the above-captioned proceeding.

3. In its Opposition, filed with the Commission on May 24, 2002, Qwest argued that the AT&T Motion constituted a delaying tactic with respect to the above-referenced proceeding. The Qwest Opposition noted that no standard for what constitutes an interconnection agreement which must be filed has been established, although it has filed and sought approval of "hundreds" of interconnection agreements pursuant to Section 252 of the federal Act. Qwest also showed that it has formally sought clarification of this issue from the Federal Communications Commission, which agreed so provide that clarification. *See*, Qwest's April 23, 2002, Petition for declaratory ruling on the scope of the duty to file and obtain prior approval of negotiated contractual arrangements under Section 252(a)(1), FCC WC Docket 02-89. The comment cycle ends June 13, 2002, and the FCC will thereafter render a decision. AT&T has participated in this FCC proceeding and has filed comments. Noting that AT&T's argument relied heavily on allegations concerning Qwest's dealings with Eschelon, Qwest noted that this company did not provide any services in Wyoming. Further, Qwest committed in writing to the Commission that it would voluntarily file and seek approval for "all contracts, agreements and letters of understanding with CLECs that create forward-looking obligations to meet the requirements of sections 251(b) or (c) . . ." of the federal Telecommunications Act of 1996. (See, May 10, 2002, letter of R. Steven Davis of Qwest to the Commission attached to the Qwest Opposition.) It is creating a management committee to ensure compliance. Qwest also, and very importantly, discussed the fact that the agreements and their impact on the independent third-party testing of Qwest's Operational Support Systems, which was conducted under the auspices of the 13-state Qwest Regional Oversight Committee (the ROC OSS test), was reviewed and analyzed by the KPMG consulting firm. According to Qwest, this KPMG review, as of May 9, 2002, showed that there was a lack of evidence that the agreements had affected the ROC OSS test.

4. Pursuant to due notice, the AT&T Motion, the AT&T Reply and the Qwest Opposition were heard at the Commission's regular open meeting of June 6, 2002, with Qwest, AT&T, Contact Communications, the Consumer Advocate Staff, InTTec and Visionary Communications (the Visionary Group) appearing through counsel and providing arguments.

5. AT&T clarified that it wanted the above-captioned proceedings left open to provide for discovery, an investigation and a formal review of the potential impact of any agreements on Wyoming. AT&T argued that an investigation would amount to an assertion of Wyoming's "state's rights" to define which agreements must be filed and investigated. AT&T admitted, however, that there was no general standard definition

of such agreements. It learned from and discussed with the Commission staff the KPMG report that found no effect from the agreements on the ROC OSS testing. AT&T also discussed investigatory proceedings going forward in other states, notably in Iowa and Minnesota, acknowledging that they were separate from the relevant Section 271 proceedings in those states.

6. Qwest responded, noting that another case has already been docketed before the Commission and urged further consideration to take place in that proceeding. Complaint processes and court action were also available as remedies if any harm were found. In the meantime, Qwest would adopt a broad filing standard in Wyoming and await the definitive ruling which it has sought from the FCC and which would establish a national standard for such filings. It noted that AT&T had filed similar motions in nine states in which Qwest provides local exchange service and that the four states which had considered it as of June 6, 2002 (Colorado, Montana, Nebraska and North Dakota) had denied it.

7 The Visionary Group argued in favor of investigating the agreements in this proceeding. Counsel stated that such an investigation would allow it to bring up questions of retail contractual services, averring also that Qwest has sold products to a competitor but would not sell them to the Visionary Group. Counsel thought a hearing was necessary for understanding the Wyoming-specific issues in this case.

8 Contact Communications urged the Commission not to make a decision until pending motions by TouchAmerica, not currently a party to this case, were considered by the Commission. Counsel suggested that allowing "pick and choose" incorporation of provisions from interconnection agreements reached anywhere in the nation would help to alleviate the problem.

9. The Consumer Advocate Staff argued that the issue of what constitutes an interconnection agreement that must be filed for approval by the Commission was properly before the Federal Communications Commission. It took no formal position on the AT&T Motion but noted that an alternative forum exists for hearing and review of the situation.

10. The issue of what constitutes an interconnection agreement which must be filed for approval is properly before the Federal Communications Commission. It makes no sense to us to craft a local standard which might require the filing of an agreement in Wyoming while the same document could be kept secret in an adjoining state. There are many instances in which local expertise and concerns require us to undertake Wyoming solutions to Wyoming problems; but this is not such a case. We have received no evidence that any wrongdoing is taking place in Wyoming regarding any "secret" interconnection agreements; and, the KPMG report of its analysis of the impact of the agreements on the ROC OSS testing process -- a place where such problems would be likely to manifest themselves -- shows no impact. Moreover, our specifically docketed proceeding to consider the subject (Dockets No. 70017-TC-02-26 and 70000-TC-02-773), instituted at the urging of AT&T, is the right proceeding in

which to consider further action on the issue. Several of the issues brought up by AT&T, Contact Communications and the Visionary Group are Wyoming-specific. They have been argued in the state-specific hearing in this matter and will be dealt with in our deliberations on these Wyoming issues. In the meantime, the commitment of Qwest to file all of the broad category of agreements described above provides a way to examine them and see their impact on Wyoming in an open forum. Each agreement will be noticed and subject to public comment before being considered for approval by the Commission under the federal Telecommunications Act of 1996.

11. We conclude that good cause has been shown in the public interest why the AT&T Motion should be denied. We will remain receptive, however, to any showing of actual harm to Wyoming consumers arising from an interconnection agreement and will work to remedy any such harm.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The AT&T Motion is denied

2. This order is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming, on June 18, 2002.

PUBLIC SERVICE COMMISSION OF WYOMING

/s/ Steve Ellenbecker
STEVE ELLENBECKER, Chairman

/s/ Steve Furtney
STEVE FURTNEY, Deputy Chair

/s/ Kristin H. Lee
KRISTIN H. LEE, Commissioner

(SEAL)
Attest:

/s/ Stephen G., Oxley
STEPHEN G. OXLEY, Secretary and Chief Counsel

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION OF QWEST CORPORATION REGARDING RELIEF UNDER SECTION 271 OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996, WYOMING'S PARTICIPATION IN A MULTI-STATE SECTION 271 PROCESS, AND APPROVAL OF ITS STATEMENT OF GENERALLY AVAILABLE TERMS	)	Docket No. 70000-TA-00-599 (Record No. 5924)

ORDER ON GROUP 5 WORKSHOP ITEMS:
SECTION 272, TRACK A, AND GENERAL SGAT TERMS AND CONDITIONS
(Issued June 19, 2002)

This matter is now before the Wyoming Public Service Commission (Commission) for consideration of the degree to which Qwest Corporation (Qwest) has successfully addressed issues concerning Section 272 of the federal Telecommunications Act of 1996 (the federal Act), "Track A," and the general terms and conditions of Qwest's Statement of Generally Available Terms (SGAT) as it seeks to demonstrate compliance with 47 U.S.C. § 271 and related provisions of the federal Act to obtain a recommendation from the Commission to the Federal Communications Commission (FCC) on whether or not Qwest should be allowed to offer originating in-region interLATA services in Wyoming. The federal Act sets forth a number of criteria regarding the nature of the access and interconnection Qwest must offer to competitors and regarding the status of the intrastate local exchange markets before Qwest may be allowed into the in-region interLATA market in Wyoming. Among them are the Group 5 workshop issues discussed individually below.

The Commission, having reviewed the report of the multi-state consultant provided with respect to this portion of the proceeding, and the written comments, testimony, exhibits and arguments of the parties, having heard oral arguments in open hearing, having reviewed applicable telecommunications utility law and its files concerning both this case and the participants, and being otherwise fully advised in the premises, HEREBY FINDS AND CONCLUDES:

1. Qwest filed Section 272 testimony of Marie Schwartz and Judith Brunsting on March 30, 2001, and prepared rebuttal testimony by them on May 23, 2001. AT&T filed the Affidavit and Supplemental Affidavit of Cory Skluzak on May 4 and May 17, 2001. Qwest (July 26, 2001), the Commission's Consumer Advocate Staff (July 25, 2001), and Sprint Communications (July 26, 2001), filed briefs on Group 5 issues. AT&T filed

briefs on Group 5 issues on July 30, 2001. AT&T and Qwest filed reply briefs on August 2, 2001. The Consumer Advocate Staff filed a Reply Brief on August 13, 2001.

2. On September 24, 2001, the consultant retained by the states participating in the Qwest Section 271 multi-state compliance proceeding (the Consultant), with the assistance of state commissions staff members, filed with the Commission his *Facilitator's Report on Group 5 Issues: General Terms and Conditions, Section 272, and Track A* (the Workshop Report) giving recommendations to the participating commissions on the disposition of Group 5 issues in this case.

3. Pursuant to due notice, including the Commission's Order Providing for Separate Consideration of Group 5 and Group 5A Issues, and Setting Oral Arguments and Deliberations on Group 5 and Group 5A Issues, issued on November 6, 2001, the Commission held oral arguments on Group 5 workshop issues beginning at 9:00 a.m. on November 20, 2001, in its hearing room in Cheyenne, Wyoming. Qwest and the Consumer Advocate Staff appeared through counsel and participated to the extent they deemed necessary in the proceedings. QSI Consulting participated in the proceeding as consultants and advisors to the Commission. No other party appeared or participated.

4. Pursuant to due notice, including the aforementioned order of November 6, 2001, the Commission deliberated Group 5 issues beginning at 9:00 a.m. on December 18, 2001, at its hearing room in Cheyenne, Wyoming, thereafter directing the preparation of an order consistent with their decision.

Section 272 – Separate Affiliate Requirements

5. Subsections 272 (a) through (g) of the federal Act, define the business structure and relationship under which Qwest must establish an affiliate which will provide competitive in-region, originating, interLATA telecommunications services if its application therefor to the FCC is approved. Qwest designated Qwest Communications Corp. (QCC) as its section 272 affiliate in January 2001. Among other provisions, 47 U.S.C. §§ 272(b) and (c) set forth certain requirements for this separate entity and its relationship to Qwest the local exchange service provider. They include:

> "(b) STRUCTURAL AND TRANSACTIONAL REQUIREMENTS- The separate affiliate required by this section--
>
> "(1) shall operate independently from the Bell operating company;
>
> "(2) shall maintain books, records, and accounts in the manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by the Bell operating company of which it is an affiliate;
>
> "(3) shall have separate officers, directors, and employees from the Bell operating company of which it is an affiliate;

"(4) may not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the Bell operating company; and

"(5) shall conduct all transactions with the Bell operating company of which it is an affiliate on an arm's length basis with any such transactions reduced to writing and available for public inspection.

"(c) NONDISCRIMINATION SAFEGUARDS- In its dealings with its affiliate described in subsection (a), a Bell operating company--

"(1) may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards; and

"(2) shall account for all transactions with an affiliate described in subsection (a) in accordance with accounting principles designated or approved by the Commission."

6. The Workshop Report discussed and disposed of all outstanding separate affiliate issues, consisting of Separate Affiliate Requirements (including Separation of Ownership, and Prior Conduct); Books and Records issues (Generally Accepted Accounting Principles, Materiality, Documentation, Internal Controls, Separate Charts of Accounts, and Separate Accounting Software); Separate Officers, Directors, and Employees (including Routine Employee Transfers, 100 Percent Usage, Award Program Participation, Comparing Payroll Registers, Separate Payroll Administration, and Officer Overlap); Transaction Posting Completeness (including Posting Billing Detail, Initiation of the Posting of QCC Transactions, Indefinite Service Completion Dates, and Verifications); Non-Discrimination; and Compliance With FCC Accounting Principles. The Workshop Report, at page 7, stated that:

"The record demonstrates that Qwest has met the [sic] each of the separate affiliate requirements established by section 272 of the Telecommunications Act of 1996."

The Workshop Report also generally rejected the arguments and objections by the Consumer Advocate Staff and AT&T Communications of the Mountain States, Inc. (AT&T) against an overall finding that Qwest has met the separate affiliate requirements of Section 272.

7. The Workshop Report further suggested, at p. 8, that:

"Qwest should provide by November 15, 2001 the results of a third party examination to verify that those changes are now producing an accurate, complete, and timely recording in its books and records of all appropriate accounting and billing information associated with transactions between the BOC and the 272 affiliate."

Qwest filed the required report, the Report of Independent Public Accountants (the KPMG Report), with the Commission and all parties on November 15, 2001, covering the period from April 1, 2001, to August 31, 2001. The KPMG Report concluded that, except for certain described instances, Qwest was in compliance in all material respects with the

requirements of 47 U.S.C. §§ 272(b)(2), (b)(5) and (c)(2). Thereafter, Qwest filed the affidavits of Marie Schwartz and Judith Brunsting stating that it had corrected the instances of noncompliance identified in the KPMG Report and that Qwest had implemented internal controls to provide assurances that such instances do not occur again. The KPMG Report actually showed that the revenues flowing from Qwest to QCC were understated overall.

8. Our review of the record shows that there are several other factors and procedures in place which will help to ensure continued compliance with Section 272 by Qwest. They are FCC oversight and enforcement structures, the Cost Allocation Manual (CAM) filing requirements of the FCC, and the post-271 audit provisions previously established in this proceeding. Additionally, we retain oversight over the process at the Wyoming level and may act in the future to provide a rapid and informed cure for abuses with respect to the local exchange markets and competition in Wyoming. We are satisfied that the substantial evidence shows that QCC will be sufficiently separated from Qwest that it can operate on a competitively equal footing with other interexchange carriers in Wyoming and that this fact can be observed, audited and clearly understood going forward. Qwest's recommendation, in its October 5, 2001, Comments to the Commission on the Workshop Report, that the Commission adopt the findings and conclusions of that Report relating to Section 272 issues, is well founded.

Track A

9. The Track A requirement, found at 47 U.S.C. § 271(c)(1)(A) requires Qwest to show the presence in Wyoming of competing local exchange carriers which either entirely or "predominantly" use their own facilities to compete before Qwest can obtain its requested Section 271 approval. This section provides that:

> "A Bell operating company meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service (as defined in section 153(47)(A), but excluding exchange access) to residential and business subscribers. For the purpose of this subparagraph, such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier."

This leaves us with four questions for our Track A analysis which must be answered in the affirmative before we can find Qwest to be compliant:

a. Has Qwest signed one or more binding agreements which we have approved under Section 252 of the federal Act?

b. Is Qwest providing access and interconnection to competing providers of exchange service not affiliated with it?

c. Are there unaffiliated competing providers of telephone exchange service to residential and business customers in Wyoming?

d. Do these unaffiliated competitors offer local exchange service either exclusively or predominantly over their own telephone exchange service facilities?

10. The Workshop Report concluded that Qwest's evidence demonstrates that it meets all four of these Track A requirements in Wyoming.

a. Regarding criterion a, the Workshop Report observed, at page 73, that Qwest had entered into 52 binding and approved interconnection agreements in Wyoming by April 30, 2001. A late filed exhibit by Qwest witness David L. Teitzel (Qwest Exhibit DLT-9) presented updated information confirming the existence of 58 such binding, approved Wyoming agreements, as of October 31, 2001.

b. Regarding criterion b, the Workshop Report stated, at page 74, that Qwest was providing access and interconnection to six competitive local exchange carriers (CLECs) in Wyoming through 25,163 leased unbundled loops as of April 30, 2001. Qwest's late filed Exhibit DLT-8 indicated that the number of unbundled loops in service in Wyoming, as of October 31, 2001, had risen to over 26,300.

c. Criterion c addresses the question of whether the CLECs present in Wyoming actually provide local exchange services to residential and business customers. There was much discussion and comment on how to estimate or calculate penetration levels and percentages for CLECs in Wyoming, and the Workshop Report amply illustrates this inquiry. (*See*, Workshop Report, section V.D, *passim*.) The various estimation methods, applied in conjunction with actual data, show CLEC market shares in Wyoming ranging from 10.8% to 14.4%. Qwest provided evidence for Wyoming that, as of April 30, 2001, it provided 25,163 unbundled loops for six CLECs; 1,930 resold business lines; 370 resold residential lines; 2,742 Local Interconnection Service (LIS) trunks for five CLECs; and 926 bypass access lines for one CLEC. This evidence showed that over 22 million minutes of local traffic were exchanged between Qwest and CLECs in Wyoming. Qwest updated this information in late-filed exhibits at the Wyoming oral arguments discussed above, showing increases in all areas as of October 31, 2001, viz.: 26,347 unbundled loops for six CLECs; 1,961 resold business lines; 397 resold residential lines; 4,086 LIS trunks for five CLECs, 948 bypass access lines for one CLEC and over 26 million minutes of local traffic exchanged between Qwest and Wyoming CLECs. At the November 20, 2001, oral arguments, Qwest stated that:

> "The total minutes exchanged between Qwest and the CLECs increased from over 19 million at the end of last year to over 27 million just for the month of July 2001 this year. The number of CLEC end user white pages listings dramatically increase from 2,149 at the end of last year, to 12,928 in July of this year." (Argument of John Munn Esq., for Qwest in the Transcript of November 20, 2001, oral arguments, hereinafter Tr., p. 72.)

On the quality of Qwest's evidence, the Workshop Report observed and later concluded that:

> ". . . Qwest does not use estimates for all counts of access lines served by competitors. It has substantial direct information about loops that CLECs secure as UNEs from Qwest, for example. Its need for estimation is in determining access line numbers in cases where CLECs bypass Qwest's network, thereby having no reason to divulge to Qwest information from which access line counts can be derived. The FCC is accustomed to using estimates of the number of bypass lines. It has in fact used methods that would have produced much higher counts (and in accord with a method that has withstood objection in prior FCC section 271 proceedings) than what Qwest proposes here." (Workshop Report at page 79.)

The Workshop Report concluded that the Track A requirement for service to residential customers was established in Wyoming. It also specifically noted that no challenge was made to the assertions that at least two CLECs provide local exchange services to business customers in Wyoming. The Workshop Report also alludes to another "confidential" CLEC which provides "confidential" local exchange service in Wyoming. (Group 5 Report at pages 84-86.) We cannot count the statistics of this entity which wishes to remain confidential, but we do note that the existence of the confidential CLEC further bolsters our findings that there are companies providing competitive local exchange service in Wyoming.

The FCC has previously stated that the standard for this inquiry should be that competing CLECs are serving "more than a *de minimis* number of end users." (Workshop Report at page 74.) Penetration levels of 5.5% have been found to meet this test; and, the Workshop Report notes, at page 76, that FCC data ". . . shows that overall levels of local exchange competition across the country remain moderate, growing from 4.4 percent at the end of 1999 to 8.5 percent at the end of 2000. That nationwide information includes states that are on average significantly more populous than those participating here."

d. Regarding criterion d, the Workshop Report observed and concluded, at pages 85-86) that:

> "The FCC has held that a CLEC's "own" facilities include UNEs that it leases from the incumbent provider. * * * Because of the commonality of the evidence presented and the lack of specific challenge to what facilities were being used, the proposed conclusion set forth under the preceding issue, *Existence of Competing Providers of Residential and Business Service*, is equally applicable here."

We reiterate that the most important Track A consideration is not the success or pervasiveness of facilities-based local exchange competitors in Wyoming but that such competitors in fact exist. This shows that Qwest's local exchange markets are sufficiently open to allow facilities-based market entry; and we understand that such entry would not, in a truly competitive market, occur simultaneously throughout the

state or offer a single uniform level of service choices. We must remain satisfied that Qwest is not acting in discriminatory and anticompetitive ways toward new market entrants; and we would be rightly concerned if only a *de minimis* level of entry were to occur. However, if we were to insist on a certain percentage of market penetration or another arithmetic test of "adequate" competitive facilities-based local exchange service in the areas Qwest serves, we would be engaging in regulatory market engineering rather than, as we should, helping to foster the conditions under which fair local service competition can occur and continue.

11. We do not believe that the determination of the Track A issue should be simply a matter of numbers. We must make an informed assessment of Wyoming's market situation and the quality of the competition which has come to those markets. We have found entrants successfully using both facilities-based and resale avenues for market entry. We find that the LIS trunking method of estimating market penetration by CLECs is useful, that Qwest has employed and presented the results of a very conservative version of that method, and that it bolsters the conclusion that Track A criteria have been met in Wyoming. (*See*, Tr., pp. 89-90 and 137-138.) We do not foreclose any reasonable method of examining or illustrating Qwest's Track A compliance, and we observe that no reasonable method conscientiously applied in this proceeding has tended to demonstrate a lack of compliance by Qwest in Wyoming.

12. In its Comments on Facilitator's Report on Track A, filed with the Commission on October 5, 2001, Qwest argued that:

> "The Facilitator has carefully, thoroughly, and fairly analyzed in his Report the parties' arguments and evidence regarding Qwest's compliance with the requirements of Track A, and he correctly concludes that Qwest fully satisfies those requirements in this state. Qwest respectfully requests that the Commission adopt these sections of the Report in their entirety and find that Qwest has met the requirements of Track A in Wyoming."

The direct and rebuttal testimony for Qwest of David L. Teitzel, as well as its opening and reply briefs and comments, illustrate Qwest's belief that it is in full compliance with Track A requirements in Wyoming.

13. At our Group 5 deliberations, we found that, based on the evidence of record in this case, including the material referenced and that discussed above, Qwest has met the Track A requirements for Wyoming. We accepted the Workshop Report's findings and conclusions on Track A.

General Terms and Conditions

14. The General Terms and Conditions under which Qwest interconnects and offers interconnection to competitive local exchange carriers affect virtually all of the checklist items found at 47 U.S.C. § 271(c)(2)(B). Although the SGAT is not a simple contract in the traditional sense, it has the form of a contract and expresses Qwest's

interconnection undertakings generally in contract language. The General Terms and Conditions, like the generally applicable terms of other agreements, form the connective tissue that makes the agreement function smoothly. All parties were thus in agreement in this proceeding that General Terms and Conditions are integral parts of the SGAT and of Qwest's fulfillment of the specific checklist requirements identified in the SGAT. Although they were not part of the original multi-state workshop process, many General Terms and Conditions issues were identified during early workshops. (*See, e.g.*, the testimony and rebuttal testimony of Larry Brotherson for Qwest, Workshop Report, *passim*.)

15. The workshop process resulted in the resolution of 19 General Terms and Conditions issues, including the SGAT Amendment Process, Implementation Schedule, SGAT Definitions, Discontinuance of Specific Services, Term of Agreement, Proof of Authorization, Payments, Taxes, Insurance, Force Majeure, SGAT Section 5.11 – Warranties, Nondisclosure, Agreement Survival, Dispute Resolution, Controlling Law, Notices, Publicity, Retention of Records, and Network Security.

16. Of the 18 remaining General Terms and Conditions issues, 17, including Comparability of Terms for New Products or Services, Limiting Durations on Picked and Chosen Provisions, Applying "Legitimately Related" Terms Under Pick and Choose, Successive Opting Into Other Agreements, Conflicts Between the SGAT and Other Documents, Implementing Changes in Legal Requirements, Third-Party Indemnification, Responsibility for Retail Service Quality Assessments Against CLECs, Intellectual Property, Continuing SGAT Validity After the Sale of Exchanges, Misuse of Competitive Information, Access of Qwest Personnel to Forecast Data, Change Management Process, Bona Fide Request Process, Scope of Audit Provisions, Scope of Special Request Process, and Parity of Individual Case Basis Process with Qwest Retail Operations, have been resolved during the Group 5 process. The remaining issue, Second-Party Liability Limitations, was resolved by consensus language negotiated among the parties after the issuance of the Workshop Report. Based on this resolution, Qwest deleted section 5.8.6 of the SGAT and included consensus language in section 11.34.

17. One issue, Landowner Consent to Agreement Disclosure, was carried over from Paper Workshop (see the Facilitator's Report of March 18, 2001, thereon) for resolution here. Qwest proposed a new SGAT section 10.8.4.1.3.1 in the Paper Workshop. In the Group 5 workshop, AT&T proposed changes to Qwest's offered language. After examination of the issue in Group 5, the Workshop Report rejected AT&T's position, allowing Qwest's earlier proposed language to stand.

18. Regarding Misuse of Competitive Information, the Workshop Report observed that:

> ". . . the record does not allow a determination of whether Qwest takes reasonable steps to: (a) minimize the possibility of, (b) discourage, (c) detect, or (d) punish inappropriate conduct. * * *

> Given the importance of this issue, therefore, Qwest should submit a report to the commissions within 30 days detailing its programmatic efforts addressing all four of these key steps in assuring that reasonable steps are taken to control the use of sensitive information. This report should be designed to allow the commissions to make a finding that Qwest has in place a reasonable and comprehensive program for assuring that the possibility for inappropriate use of information received through its GUI and EDI interfaces with CLECs is appropriately minimized." (Group 5 Report at page 39)

On October 22, 2001, Qwest filed with the Commission its Report on Measures to Assure that Competitive Information Obtained Through Qwest's Ordering Systems is Properly Protected. This report asserted that Qwest has put in place a reasonable and comprehensive program for assuring that the inappropriate use of information received through its ordering systems is appropriately minimized. In reviewing this Qwest report, we find that it provides the Commission with adequate assurance that the possibility for inappropriate use of information received through its GUI and EDI interfaces has been appropriately minimized." We formally accepted the October 22, 2001, report on protecting competitive data at our Group 5 deliberations. The possibility of error has not been completely foreclosed, however; and the Commission will monitor future dealings with competitive local exchange carriers to assure ourselves that later misuse is isolated, inadvertent and minimal and that it is not abusive in intent or result.

19. On October 5, 2001, Qwest filed its Comments with the Commission. Regarding the remaining unresolved issues, Qwest stated that:

> "Because Qwest does not challenge any recommendations in the Group 5 Report, Qwest respectfully requests that the State Commissions adopt the Report and the consensus language as set forth below. * * * Qwest will implement the Group 5 Report in full and file SGAT language that complies with the Report, even as to the issues with which Qwest disagrees." (Qwest Comments at pages 3 and 4.)

We have reviewed the language changes and revisions submitted by Qwest with its Comments and find that they are compliant.

20. At our Group 5 deliberations, we specifically agreed with the recommendation of the Consumer Advocate Staff, which urged that the Commission ". . . assure that no provision of the SGAT or the Qwest Performance Assurance Plan (QPAP) interfere with the Wyoming Commission's jurisdiction to regulate quality of service between providers, for example, by limiting the type of remedies the Commission might otherwise impose." (Post-Report Comments of the Consumer Advocate Staff at page 2.) We specifically agree that the SGAT cannot be used to contract away the Commission's jurisdiction to oversee Wyoming telecommunications markets and market participants in the public interest and in accordance with the law. We will take whatever other and further steps that are necessary to ensure this outcome.

21. We also agree with the Workshop Report's recommendation at page 41, and the comments of the parties, that the record developed for Group 5 does not allow for a

meaningful consideration of Qwest's Change Management Process (CMP). CMP must therefore be addressed formally by the Commission in other specific proceedings in the above-captioned case. The Commission will not make a final favorable recommendation or deem Qwest in ultimate compliance until the CMP issue has been heard to the satisfaction of the Commission and decided by it.

22. We note that the Comments of AT&T Communications of the Mountain States, Inc., on Group 5 issues are, though indicative of the strength of its views on these issues, at times unhelpful when they become merely accusatory or disparaging to the Consultant or the multi-state process.

Findings and Conclusions

23. On the basis of the Wyoming and multi-state record and our specific consideration of the Wyoming filings and arguments of the parties to this proceeding, we find that Qwest has demonstrated general compliance with Group 5 workshop issues associated with Section 272 of the federal Act, Track A, and regarding the general terms and conditions of Qwest's SGAT, including satisfactory resolution of the issues identified by the Consultant as "disputed" in the Workshop Report. We find that the "curative" reports, discussed above, as required in the Workshop Report, have been filed and do show the necessary compliance by Qwest. We find that no provision of the SGAT or the Qwest Performance Assurance Plan (QPAP) should be allowed to interfere with our jurisdiction to regulate the quality of service between providers, including the limitation of remedies. We find that Qwest's CMP should be considered separately as we have provided. We reiterate that we cannot make a favorable final recommendation to the FCC until the CMP issue has been heard and decided by the Commission.

24. Based on this record, we accept the Workshop Report's conclusions, as described hereinabove, with respect to Group 5 issues, and the issue carried forward to Group 5 concerning landowner consent. The Workshop Report is further supported by the curative reports furnished by Qwest and by the arguments and views of parties shared with us. In accepting the findings, conclusions and recommendations in the Consultant's Workshop Report, we, in contemplation of the entire record, including the Wyoming arguments and hearings held thereon, determine that the substantial evidence of record supports our decisions made hereinbelow.

25. Further regarding the SGAT, we believe that our separate consideration of Qwest's unbundled network element pricing in Docket No. 70000-TA-01-700 will be sufficient to ensure that Qwest will not use pricing to erect barriers to the provision of competitive local exchange service. We also believe that the SGAT, including the required QPAP provisions, will provide adequate protection to market entrants seeking to interconnect with Qwest. However, we will reserve further statements on the need for ongoing Commission oversight in this process, including our role in the long term administration of performance indicator definitions (PIDs), until after our final

consideration of the independent third-party testing of Qwest's Operational Support Systems (OSS) conducted under the auspices of the 13-state Qwest Regional Oversight Committee (ROC), the change management process and the performance measures audit and data reconciliation.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Workshop Report is hereby accepted.

2. Subject to the reservations and conditions described hereinabove, the Commission is prepared to make a recommendation to the FCC that Qwest is in compliance with regard to Group 5 issues regarding Section 272 of the federal Act, Track A, and the general terms and conditions of its SGAT.

3. This order is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming, on June 19, 2002.

PUBLIC SERVICE COMMISSION OF WYOMING

/s/ Steve Ellenbecker
STEVE ELLENBECKER, Chairman

/s/ Steve Furtney
STEVE FURTNEY, Deputy Chair

/s/ Kristin H. Lee
KRISTIN H. LEE, Commissioner

(SEAL)
Attest:

/s/ Stephen G., Oxley
STEPHEN G. OXLEY, Secretary and Chief Counsel

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION OF QWEST CORPORATION REGARDING RELIEF UNDER SECTION 271 OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996, WYOMING'S PARTICIPATION IN A MULTI-STATE SECTION 271 PROCESS, AND APPROVAL OF ITS STATEMENT OF GENERALLY AVAILABLE TERMS	)	Docket No. 70000-TA-00-599 (Record No. 5924)

ORDER ON CONSIDERATION OF GENERAL COMPLIANCE
(Issued July 3, 2002)

This matter is now before the Wyoming Public Service Commission (Commission) for an overall consideration of the degree to which Qwest Corporation (Qwest) has successfully demonstrated compliance with 47 U.S.C. § 271 and related provisions of the federal Act to obtain a favorable recommendation from the Commission to the Federal Communications Commission (FCC) on whether or not Qwest should be allowed to offer originating in-region interLATA services in Wyoming. Specifically, we must consider [i] whether Qwest has met the requirements for satisfying the competitive checklist at 47 U.S.C. § 271(c)(2)(b); [ii] whether Qwest has, with Qwest Communications Corporation (QCC) met the separate affiliate requirements of 47 U.S.C. § 272; and [iii] whether the requested authorization is consistent with the public interest, convenience and necessity as stated in 47 U.S.C. § 271(d)(3)(C). In this order we will include final consideration of the Regional Oversight Committee independent third party testing of Qwest's Operations Support Systems (the ROC OSS), the Change Management Process (CMP), and the Performance Measures Audit and Data Reconciliation (collectively, the PMA). Our full consideration of the Wyoming-specific issues brought to us will be by separate order. The Commission, having reviewed the various reports and other evidence produced during the multi-state process by the consultant and the participants, the briefs and pleadings filed in Wyoming, having reviewed the written comments, testimony, exhibits and arguments of the parties, having heard much oral argument in open hearing, having reviewed applicable telecommunications utility law and its files and prior orders concerning the entire case and the participants therein, and being otherwise fully advised in the premises, HEREBY FINDS AND CONCLUDES:

Procedural Matters

1. On May 28, 2002, the Final Report on the ROC OSS test (the ROC OSS Final Report) was filed with the Commission.

2. On May 30, 2002, Qwest filed its Fourth Revision to its Statement of Generally Available Terms (SGAT), addressing issues raised and decided in Wyoming through the Commission's Group 5 Order in this case.

3. On June 13, 2002, and pursuant to due notice, the Commission held a public hearing to listen to presentations and obtain further information on all aspects of the ROC OSS test and Final Report from the members of the Third Party Testing Organization: Hewlett Packard Consulting (which performed the function of pseudo-Competitive Local Exchange Carrier (P-CLEC) in the tests; Liberty Consulting Group (which conducted the performance measures audit and data reconciliation); KPMG Consulting (administrator of the test); and Maxim Telecom Consulting Group (the ROC OSS testing project manager). The presentations provided the Commission with a complete overview of the Final Report (including ROC OSS test requirements, scope and content, testing criteria, a summary of test results, observations and exceptions, the Final Report's findings and recommendations, relevant issue identification and resolution, impasse resolution (including a discussion of closed-unresolved issues), regional and Wyoming performance measures and performance indicator definitions and their ability to measure Qwest's behavior accurately, the related PMA and the CMP.

4. On June 14, 2002, and pursuant to due notice, parties presented oral arguments on ROC OSS, CMP and PMA issues in this case. Qwest, AT&T Communications of the Mountain States, Inc. (AT&T), and the Consumer Advocate Staff of the Commission participated.

5. On June 20, 2002, the Commission issued its Order Granting Extension of Time to File Briefs (Regional Oversight Committee independent third party testing of Qwest's Operations Support Systems, Change Management Process, Performance Measures Audit and Data Reconciliation), giving the parties to the close of business on June 26, 2002, to file and serve briefs on the ROC OSS, CMP and PMA issues. Under this order, any party could expand its brief to include a discussion of and suggestions for the resolution of each issue before the Commission in this proceeding.

6. On June 21, 2002, Qwest filed its "Compromise" version of its Qwest Performance Assurance Plan (QPAP), offering its renewed position on six issues discussed in our order herein of January 30, 2002. The QPAP is intended to be Exhibit K to the SGAT.

7. On June 24, 2002, Qwest filed its Qwest Corporation's Report on the Status of Change Management Process Redesign, illustrating the progress to date on finalizing the CMP. The final written version of the CMP is intended to be Exhibit G to the SGAT.

8. On June 26, 2002, Qwest filed its Brief Regarding the Final ROC OSS Test Report and its Qwest Corporation's Post-Hearing Brief re: Commercial Performance and Data Reconciliation.

9. On June 26, 2002, AT&T filed its Brief Regarding Qwest's Change Management Process; and its AT&T's Post-Hearing Brief With Respect to Issues Relating to the ROC's OSS test and Final Report and Qwest's Commercial Performance Data. On that day, AT&T, with Covad Communications, filed a Joint CLECs Response to Qwest Corporation's Compromise QPAP.

10. On June 27, 2002, Qwest filed its Response to Joint CLECs Response to Qwest Corporation's Compromise QPAP.

11. At its regular open meeting of June 28, 2002, the Commission considered Qwest's compliance filing in the case in which it sought approval of total element long run incremental cost (TELRIC) pricing related to unbundled network elements and interconnection in Docket No. 70000-TA-01-700 (the TELRIC case) and accepted the filing as being in conformance with the approved Stipulation in that case. The TELRIC compliance filing is Exhibit A to Qwest's SGAT.

12. At its regular open meeting of June 28, 2002, and pursuant to due notice, the Commission held deliberations on:

a. The TELRIC case as it addresses issues in this case.
b. The PMA and Data Reconciliation.
c. Unfiled agreements between Qwest and competitive local exchange carriers.
d. The ROC OSS Final Report, including all closed/unresolved issues.
e. General compliance by Qwest with the competitive checklist, Track A, separate affiliate requirements, public interest requirements, and emerging services requirements.
f. The CMP, including the latest redlined CMP document.
g. Wyoming-specific issues.
h. The QPAP in its Commission-ordered and "compromise" forms, and how the QPAP must serve the public interest.
i. General SGAT compliance with Commission directives (except for the QPAP, CMP, Performance Indicator Definitions (PIDs), and Wyoming TELRIC rates which were considered separately).
j. The continuing role of the Commission regarding process oversight, including, for example, long-term PID administration, SGAT disputes and changes, the QPAP and other matters.
k. Any needed direction on further demonstrations of compliance.
l. Procedural and other matters, including further interaction with the FCC.

13. At the close of deliberations, the Commission directed the preparation of an order consistent therewith.

The Law to be Applied: Wyoming

14. This proceeding is, to an extent, *sui generis*, as it has, unlike many other proceedings before the Commission, multi-state and federal dimensions. Even though the Commission is engaged in producing a "recommendation" to the FCC, its work is official action for which its general due process procedures and decisional formalities are observed as in other cases. Therefore, the Wyoming Administrative Procedure Act, at W.S. § 16-3-114(c)(ii)(E), requires our decisions to be supported by substantial evidence; and, at W.S. § 16-3-108(a) requires the support of "the type of evidence commonly relied upon by prudent men in the conduct of their serious affairs." The Commission must apply its expertise and experience in looking at all of the facts and circumstances of the case in reaching its decision.

15. The public interest must remain the Commission's overriding concern in telecommunications cases as in other utility cases. In the Wyoming Telecommunications Act of 1995, the public interest, discussed at W.S. § 37-15-101, requires us to encourage ". . . the development of new infrastructure, facilities, products and services" and to ". . . provide a transition from rate of return regulation of a monopolistic telecommunications industry to competitive markets . . . ." This has been our goal since the outset of this proceeding. In our order beginning this proceeding, the Procedural Order of August 11, 2000, at paragraph 5, we stated that:

> "The FCC has indicated an expectation that state commissions provide their state-specific recommendations within 20 days after Qwest Corporation files its application with the FCC. * * * [The Commission found it necessary] to develop a thorough record on all relevant issues from a Wyoming perspective in the most efficient manner possible and to ensure that Wyoming issues are thoroughly and satisfactorily addressed in a fully informed and timely manner which fosters the growth of robustly competitive telecommunications markets and the deployment of advanced telecommunications technology in Wyoming to the greatest extent possible and in accordance with Wyoming telecommunications law."

At that time, we determined that this case has an important influence on Wyoming and the development of competition in its local telecommunications service markets. The case is therefore a matter of serious concern to the Commission, under, *inter alia*, W.S. §§ 37-15-401(a), 37-15-404 and 37-15-102 of the Wyoming Act. The Commission may further, under W.S. §§ 37-15-408 and 37-2-117, establish investigations on its own motion.

The Law to be Applied: Federal

16. In order for Qwest to gain approval of an application to provide originating, in-region, interLATA services, it must first demonstrate, with respect to Wyoming, that:

a. it satisfies the requirements of either 47 U.S.C. § 271(c)(1)(A) (Track A) or § 271(c)(1)(B) (Track B). It has chosen to demonstrate compliance with Track A.

b. it has "fully implemented the competitive checklist" set forth in 47 U.S.C. § 271(c)(2)(B). It offers the SGAT, QPAP, CMP and various performance measures and other evidence discussed, *infra*.

c. the requested authorization will be carried out in accordance with the requirements of 47 U.S.C. § 272 (separate affiliate). It offers QCC as that separate competitive affiliate.

d. Qwest's entry into the in-region interLATA market is "consistent with the public interest, convenience, and necessity" under 47 U.S.C. § 271(d)(3)(C). We conceive this as a broad test standing apart from the SGAT and the QPAP. Both help to show whether the public interest is being upheld, but they are not the entire test. The public interest standard is separately stated in the federal Act and it is therefore a more general and encompassing inquiry. It goes beyond the QPAP, the SGAT and other individual issues.

17. Other federally articulated and established legal considerations will be discussed in connection with the issues to which they pertain.

TELRIC Prices

18. Under 47 U.S.C. § 252(d), just and reasonable rates for interconnection of facilities and equipment and for network elements must be based on total element long run incremental cost. They must be nondiscriminatory and may include a reasonable profit. In this case, Exhibit A to the SGAT will contain such prices for Wyoming. We will accept Qwest's compliance filing for use in this case based on our conclusion that the TELRIC prices submitted in Docket No. 70000-TA-01-700 should be accepted as being in conformance with the approved Stipulation in that case. We deferred many issues in this case for resolution in the TELRIC proceedings, and they have been successfully dealt with and disposed of there with the setting of a comprehensive list of TELRIC prices applicable in Wyoming and set in accordance with the federal Act.

The PMA and DATA RECONCILIATION

19. The PMA verifies whether the performance measurements undertaken by Qwest accurately and correctly describe Qwest's performance in the competitive local exchange markets. The further step of Data Reconciliation tests whether Qwest's reported data is accurate and whether the data reported by CLECs is the same as that reported by Qwest. In Liberty Consulting's September 25, 2001, Report on Audit of Qwest's Performance Measures, at pp. 2-3, Liberty stated that it had:

> ". . . now concluded that the audited performance measures accurately and reliably report actual Qwest performance. Therefore, the PMA resulted in significant improvements to both the processes used by Qwest and the specificity and clarity of the PID. There is a recognized need for an on-going program for monitoring the reliability and accuracy of Qwest's performance reporting. This need is heightened because the methods for reporting some measures have only recently been developed by Qwest and because of the number of changes that Qwest made during the PMA. Liberty also found that Qwest has a reasonable process in place to track and control changes in the processes used to report performance."

April 2002 performance results were observed and reported on by Liberty:

> "Liberty observed the elements of Qwest's performance measure results process, and performed the analyses, described above. Liberty's observations and analyses did not reveal that any inappropriate modifications were made to the ROC P-CLEC April 2002 data or to the processes that were used to generate the ROC P-CLEC performance measure results report for April 2002. In addition, Liberty's observations and analyses support the view that the ROC P-CLEC results were developed using the same processes employed to calculate the regional results."

Liberty also observed that the data reconciliation was accurate:

> "Qwest has reasonable processes in place to self-check its performance reporting and to correct problems found. And, on the basis of its audit and data reconciliation work that has spanned nearly two years, and on the resolution and corrections of the matters addressed in the 84 Observation and Exception reports that it has issued, Liberty believes that Qwest's performance reporting accurately and reliably report Qwest's actual performance." (Data Reconciliation from Liberty Report of April 2002, p. 7.)

20. The evidence in this case clearly shows that the PMA accurately captures the required elements of the performance of Qwest in its interactions with local exchange service competitors. The evidence also shows that the data flowing through the PMA system to and from Qwest and its competitors is accurate and can be relied upon by persons analyzing or working in the market. However, the Performance Indicator Definitions (PIDs) and their administration is an ongoing task, and an ongoing role for the Commission in PID administration is needed. The final product of this case, including the SGAT and its exhibits, must recognize the need for ongoing PID administration and the Commission's continuing role in that administration. The Commission will work cooperatively with other states in pooling PID administration efforts, recognizing that the special circumstances of the Wyoming market may, from time to time, require us in the public interest to address specific Wyoming situations in the process. We will discuss the results of the PMA process qualitatively, *infra*.

Unfiled Agreements and Related Matters

21. We have been urged by AT&T to reopen these proceedings to investigate the possibility that some allegedly "secret" agreements may have had an undue anticompetitive effect on Qwest and its dealings with interconnecting carriers. In this regard, we issued our Order on AT&T Motion to Reopen Proceedings on June 18, 2002, declining to reopen these proceedings. There has been no evidence brought forward that any agreement unfiled in Wyoming or elsewhere has had any specific adverse effect on Wyoming. The subject of what constitutes an agreement that must be filed with a state commission for approval as an interconnection agreement under the federal Telecommunications Act of 1996 (federal Act) is now rightly before the FCC for a uniform determination in this case of first impression. Qwest has undertaken to file with the Commission for approval *all* agreements with interconnecting carriers in Wyoming pending a decision from the FCC. Moreover, we are now considering an independent investigation in Dockets No. 70017-TC-02-26 and 70000-TC-02-773, in which we are urged by AT&T to review these matters. Given the status of the evidence, the above-captioned case is not the proper forum for any further consideration the Commission may require. We invite AT&T or any other company interconnecting with Qwest to provide service in Wyoming to bring any actual problems to us for hearing and an efficient and expeditious hearing and resolution.

22. Touch America filed a Petition to Intervene and Motion to Reopen Issues, asking the Commission to reopen the Section 271 proceedings to investigate a controversy over certain indefeasible rights of use (IRUs) to interstate fiber optic cabling which arose as a result of the merger of Qwest with U S WEST. Because Touch America is also pursuing a complaint actively at the FCC concerning the same IRUs, and because this request to us comes long after the issue had become known and understood and very shortly before the end of the above-captioned case, it is brought in the wrong forum and is untimely. We said as much in our June 17, 2002, Order Denying Touch America Petition to Intervene and Motion to Reopen Issues. This issue will not make a material difference in our consideration of Section 271 issues in Wyoming. Should Touch America experience any actual observable harm related to the telecommunications markets in Wyoming as a result of this situation, it may bring the matter to us at any time for hearing and resolution.

23. We note that the FCC is in general agreement with these considerations. In the Verizon New Jersey Order, WC Docket No. 02-67, FCC No. 02-189, June 24, 2002 (the Verizon New Jersey Order), the FCC stated, at p. C-3, that:

> ". . . there will inevitably be, in any section 271 proceeding, disputes over an incumbent LEC's precise obligations to its competitors that FCC rules have not addressed and that do not involve *per se* violations of self-executing requirements of the Act. As explained in prior orders, the section 271 process simply could not function as Congress intended if the Commission were required to resolve all such disputes as a precondition to granting a section 271 application."

These are just such disputes.

The ROC OSS Process and Final Report

24. The ROC's independent third-party testing of Qwest's OSS sought to determine how well Qwest actually supports the day-to-day operations needed for successful, barrier-free competition in the local markets in Wyoming, including its actual business functions and procedures. The test touches virtually every aspect of the 271 proceeding, and we deferred a number of issues to the ROC OSS test and Final Report for resolution. Success in the 271 application process would not be possible without success in the ROC OSS process. In addition to deferred issues, we specifically made the ROC OSS test applicable to emerging situations identified in the process regarding issues which might otherwise be considered "closed." See our Order on "Paper Workshop" Checklist Items, issued June 25, 2001), paragraph 9c.

25. During the testing process, we participated in the Technical Advisory Group and the ROC OSS Steering Committee, and we received periodic reports from the consultants performing the actual test, including a comprehensive presentation on the Final Report on June 13, 2002, all of which gives us a good working familiarity with the process and its results. The testing process produced only a very small number of exceptions and closed/unresolved items. Of the 685 non-diagnostic items, 645 were passed and satisfied. Only about 1.6% of the tested behaviors and procedures produced less than passing results. Among them, the severity was generally not great and some resulted from the statistical effects of small sample sizes. In most cases, Qwest produced curative measures or could reasonably rely on experience and training to bring about improved performance. Most encouragingly, the testing process brought about improvements during the test, attesting to the value and thoroughness of the test and the commitment of Qwest to meeting the requirements of the test. The test also revealed that Qwest sometimes provides better services to competitive local exchange carriers than it does to itself.

26. Perhaps the most telling evidence of success came forth in the June 13, 2002, consultant hearing. In the ROC OSS testing process, Geoff May of Hewlett-Packard was the program manager of the ROC P-CLEC test effort. May was asked if he, on the basis of his experience as a pseudo-CLEC, were to decide to actually run a CLEC, whether he thought that he could run one successfully interfacing with Qwest in Wyoming. He replied:

> "* * * Yes, I believe that. I personally believe that is the case. Like I indicated, my own personal view is that -- and I think the HP's record establishes that there were dramatic improvements in Qwest's wholesale documentation.

> "And so that if I was to leave my capacity as a consultant and lay out a shingle as a start-up CLEC, I would be dealing with a dramatically improved and, in fact, you know, completely useful and user friendly set of wholesale documentation and processes that have been subjected to review and transaction tests, et cetera." (Transcript of June 13, 2002, consultant hearings, pp. 209-210.)

27. We find, in comparing the ROC OSS test to the other OSS tests performed throughout the United States, that it is a model of great thoroughness and detail. It is a comprehensive effort which we can look on with pride and, more importantly, with a high level of confidence. The fact that a P-CLEC was used as part of the test and that it actually engaged in testing Qwest's OSS throughout its range of functionalities and throughout the 13-state jurisdictions participating in the test adds strength to the high quality of the test.

28. Our review of the ROC OSS test and Final Report requires us to decide on the weight to be given to unresolved items and to judge their severity, in light of all the facts and circumstances, for Wyoming. The test has produced an excellent picture of Qwest's work up to the time of the Final Report. As noted above, there are few remaining issues; and the quality of the testing process has been high and thorough. Going forward, the SGAT, the PIDs and the QPAP remain "living" documents in which the continuing involvement of the Commission will allow their future adaptation to better serve the public interest as circumstances change and develop. All of these considerations help to support our conclusion that Qwest should be considered as having passed this exhaustive and detailed test.

29. The FCC is in accord with this approach to the vastly complex subject of Section 271 compliance. Where multiple performance measures are associated with a checklist item, the FCC will look to the performance demonstrated by all the measurements as a whole. Thus, a disparity in performance for one measure may not provide a basis for finding noncompliance with the checklist. The Commission may also find that the reported performance data is affected by factors beyond Qwest's control, which would make it less likely to hold Qwest wholly accountable for the disparity. (*See*, Verizon New Jersey Order, pp. C-5-C-6.)

30. The Consumer Advocate Staff asks us to continue the testing, but we decline to order it. The ROC OSS test has been thorough and of superior quality; and we understand that the nature of the telecommunications industry is such that a score of 100% is not realistically achievable. Furthermore, additional testing would add between $2 million and $11 million in extra expenses with only marginal results. Because we have ordered a strong and responsive QPAP, we are further convinced that additional ROC OSS testing would be of little practical value.

The Track A Requirement

31. Track A, found at 47 U.S.C. § 271(c)(1)(A), requires Qwest to show the presence in Wyoming of competing local exchange carriers. The analysis consists of four major parts:

- Has Qwest signed one or more binding agreements which we have approved under Section 252 of the federal Act?
- Is Qwest providing access and interconnection to competing providers of exchange service not affiliated with it?

- Are there unaffiliated competing providers of telephone exchange service to residential and business customers in Wyoming?
- Do these unaffiliated competitors offer local exchange service either exclusively or predominantly over their own telephone exchange service facilities?

This requirement allows Qwest to demonstrate that the local exchange market is open by showing that competitors have actually entered the market on at least a partial facilities basis. In our order in this case of June 19, 2002, on Group 5 workshop issues, we found that these tests have been met and that Qwest meets the Track A requirement. Nothing has come to light since then which would disturb this finding. We reiterate that it is not the pervasiveness of competition but its existence which is required to satisfy this test. Neither we nor the law can act as guarantors of the success of competitors. It is enough to show their actual existence, and this has been done to our satisfaction.

The Separate Affiliate Requirement

32. When Qwest provides originating in-region interLATA long distance service, it must, under the Separate Affiliate Requirement found at 47 U.S.C. §§ 272(b) and (c), do so through the use of a business entity which is sufficiently structurally separate from Qwest Corporation that it will not have an unfair competitive advantage over other companies competing in the market. If the relationship of Qwest to the interLATA company is too close, the monopoly problem, which the federal Act seeks to address, could persist. In our order of June 19, 2002, concerning Group 5 workshop issues, we found the that the Qwest's designated subsidiary, Qwest Communications Corp., satisfied the structural, transactional and nondiscrimination safeguard tests and had passed the statutory test. With no further showings to the contrary and a later required report satisfying remaining questions, our ruling stands. Qwest has satisfied this requirement.

The General Public Interest Test

33. 47 U.S.C. § 271(d)(3)(C) requires that "the requested authorization is consistent with the public convenience and necessity." This requires us to make a general review of all of the facts and circumstances in the case to see whether the federal Act's intent that local markets be fairly opened to competition is likely to be frustrated. This criterion stands apart from, and is in addition to, our analyses of the SGAT, the QPAP, success in the ROC OSS test, the existence of adequate PIDs and other individual issues. Some issues were also deferred to the TELRIC case. It is true that failure in one of these issue areas would prevent a finding that Qwest satisfies the public interest in this general sense, but satisfaction of these individual issues is not conclusive. In our order of January 30, 2002, concerning Group 5A issues, we found this general public interest compliance, stating that:

> "Conditioned on the development of a conforming QPAP, proper PIDs and the successful completion of the ROC OSS test, the Commission recommends that Qwest has satisfied the general public interest criteria as described hereinabove."

We conclude that Qwest meets this generalized public interest criterion, as more fully described in the January 30, 2002, order on Group 5A issues, contingent on filing a conforming QPAP.

The public interest aspects of pricing were settled in the TELRIC case. We note that a conforming QPAP has not yet been filed by Qwest.

Emerging Services Issues

34. Consistent with the concept that the telecommunications market is technologically dynamic and that its regulation must be as dynamic, the FCC expanded the list of services which have become important to local service competition by adding [i] line sharing, [ii] subloop unbundling, [iii] packet switching and [iv] dark fiber, through its November 5, 1999, UNE Remand Order; and its December 9, 1999, Line Sharing Order. In our Group 3 order of April 3, 2002, we found Qwest generally compliant with emerging services issues, subject to the filing of conforming SGAT changes and success in the ROC OSS and PMA processes. We deferred pricing issues concerning Subloop Unbundling to the TELRIC case, including [i] undefined rates, and [ii] pricing for overly broad definitions of subloop categories. The ROC OSS process has been a success, the TELRIC issues have been addressed and approved by the Commission, and the required SGAT changes have been made. The CMP, discussed, *infra*, makes adequate provision for emerging services now and in the future. We note that one ROC OSS issue concerning dark fiber was closed unsatisfied because of lack of activity. Our conclusion stands that Qwest has met the requirement to furnish emerging services fairly in a competitive context in Wyoming.

The Competitive Checklist

35. 47 U.S.C. § 271(c)(2)(B) requires Qwest to satisfy a 14-point checklist in demonstrating that its local exchange service markets are fully and fairly open to competition. A major part of the effort in this proceeding went into discussion and demonstration of the degree to which Qwest has satisfied the checklist. The SGAT and its attachments are useful in demonstrating compliance, but the inquiry must (and did) go beyond an inquiry into the interconnection documentation being developed in this case.

a. Interconnection and collocation: 47 U.S.C. § 271(c)(2)(B)(i) requires "Interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)." Here, Qwest must allow requesting carriers to physically link their communications networks to its network for the mutual exchange of traffic, and the interconnection between networks must be equal in quality whether the interconnection is between Qwest and an affiliate, or Qwest and competing local carrier. In our December 2, 2001, Group 2 Order, we found Qwest generally compliant subject to the resolution of a number of deferred issues which were satisfied in other workshops, and subject to compliant SGAT changes and an adequate CMP. Wyoming Performance Results show that the modified Z scores and parity scores are well within acceptable ranges and that applicable benchmarks are being consistently met. A combination of the ROC OSS test results, the PMA and Qwest's commercial data show that this item is satisfied.

b. Access to Unbundled Network Elements: 47 U.S.C. § 271(c)(2)(B)(ii) requires "Nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)." Qwest must provide connection to network elements (e.g., loops, circuit switches, interface devices, etc.) under rates, terms, and conditions that are just, reasonable and nondiscriminatory. A variety of support systems, databases, and personnel

(collectively, Qwest's OSS) provide service to customers at a certain level of quality, accuracy and timeliness, and non-discriminatory access to OSS is required to facilitate non-discriminatory access to network elements. In our April 12, 2002, Group 4 Order, we found Qwest generally compliant, subject to the resolution of deferred issues in this and the TELRIC case, conforming SGAT changes and success in ROC OSS and PMA, together with implementing any needed changes. Wyoming Performance Results show modified Z scores and parity scores within acceptable ranges (especially during the most recent 5 months) and that benchmarks are being met. We determine that the required corrections and showings have been made and that Qwest should be considered as having satisfied this checklist item. However, some unresolved observations and exceptions in the testing process clearly point to the need for an ongoing Commission role in the process.

c. Access to Poles, Ducts, Conduits, and Rights-of-Way: Under 47 U.S.C. § 271(c)(2)(B)(iii), Qwest must provide "Nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of section 224." This must be done within reasonable time frames and on reasonable terms and conditions, with a minimum of administrative costs, consistent with fair and efficient practices. Qwest was found compliant in our Paper Workshop Order of June 25, 2001; and the one deferred issue (concerning Landowner Consent to Agreement Disclosure) was resolved in a later workshop.

d. Unbundled Local Loops: 47 U.S.C. § 271(c)(2)(B)(iv) requires the provision of "Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services." We found Qwest generally compliant with this item in our April 12, 2002, Group 4 Order, but subject to success in the ROC OSS test and PMA, with the implementation of any needed changes. Some issues were deferred to the TELRIC case and later workshops. These conditions have been met. Qwest's Wyoming Performance Results show modified Z scores and parity scores well within acceptable ranges, especially during the most recent six months. Benchmarks are being consistently met. Qwest has satisfied this checklist item.

e. Unbundled Local Transport: [47 U.S.C. § 271(c)(2)(B)(v) requires Qwest to provide "Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services." In our Group 4 Order of April 12, 2002, we found Qwest generally compliant, but subject to success in the ROC OSS test, PMA and the implementation of any needed changes. Costs were referred to the TELRIC case. Wyoming Performance Results show modified Z scores and parity scores within acceptable ranges. The amount of local Wyoming commercial data is small. However, Regional Performance Results show that Qwest's modified Z scores and parity scores are within acceptable ranges on the Regional basis. All requirements have been satisfied and this checklist item has been met.

f. Unbundled Local Switching: 47 U.S.C. § 271(c)(2)(B)(vi) requires the provision of local switching unbundled from transport, local loop transmission, or other services on an nondiscriminatory basis. Our Group 4 Order of April 12, 2002, found Qwest to be in general compliance, subject to success in ROC OSS testing with the implementation of any needed changes. Related costs were considered in TELRIC case. The P-CLEC experience

during the ROC OSS testing process shows compliance throughout. The orderly exchange of traffic has always occurred. Our finding of compliance is confirmed.

g. 911 and E911, Directory Assistance, and Operator Services: Under 47 U.S.C. § 271(c)(2)(B)(vii), Qwest must provide "Nondiscriminatory access to: (I) 911 and E911 services; (II) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and (III) operator call completion services." We found Qwest compliant in our Paper Workshop Order of June 25, 2001, as long as the ROC OSS test on these subjects was passed and certain deferred issues were satisfied in later workshops. All of our conditions have been met here; and the Wyoming Performance Results show 100% performance by Qwest in meeting the PIDs.

h. White Pages Directory Listings: According to 47 U.S.C. § 271(c)(2)(B)(viii), Qwest must make available "White pages directory listings for customers of the other carrier's telephone exchange service" for residential and business subscribers in a particular area. We found Qwest compliant in our Paper Workshop Order of June 25, 2001, on condition that the ROC OSS test was passed. Wyoming Performance Results show 100% performance by Qwest in meeting the PID. The combination of ROC OSS test results, the PMA and Qwest's commercial data all confirm that Qwest has satisfied this checklist item.

i. Numbering Administration: 47 U.S.C. § 271(c)(2)(B)(ix) mandates: "Until the date by which telecommunications numbering administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules." Qwest must provide other carriers with the same access to new NXX codes within an area code that Qwest serves. We found Qwest compliant in our Paper Workshop Order of June 25, 2001, on condition that the ROC OSS test was passed and items deferred to the Group 2 workshop were satisfied. Wyoming Performance Results show Qwest is providing 100% performance in meeting the applicable PID. All conditions have been satisfied and we determine that Qwest has satisfied this item.

j. Databases and Associated Signaling: 47 U.S.C. § 271(c)(2)(B)(x) requires "Nondiscriminatory access to databases and associated signaling necessary for call routing and completion." Qwest must demonstrate that it provides competitors with the same access to the call-related databases and associated signaling that it provides itself. We found Qwest compliant in our Paper Workshop Order of June 25, 2001, on condition that the ROC OSS test was passed. Wyoming Performance Results show Qwest is providing 100% performance in meeting the applicable PID. All conditions have been satisfied and we determine that Qwest has satisfied this item.

k. Number Portability: 47 U.S.C. § 271(c)(2)(B)(xi), requires "Until the date by which the Commission [FCC] issues regulations pursuant to section 251 to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations." We found general compliance by Qwest in our Group 2 Order of

December 4, 2002, subject to required SGAT changes and favorable ROC-OSS test results. Wyoming Performance Results show 100% performance by Qwest in meeting the applicable PID. The ROC OSS test results, the PMA and Qwest commercial data all support our determination that Qwest has satisfied this item.

l. Local Dialing Parity: 47 U.S.C. § 271(c)(2)(B)(xii) requires "Nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)." We found Qwest compliant in our Paper Workshop Order of June 25, 2001. The P-CLEC experience demonstrates that the required parity exists in fact. Qwest has satisfied this checklist item.

m. Reciprocal Compensation: 47 U.S.C. § 271(c)(2)(B)(xiii) requires Qwest to provide for "Reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)." All carriers that originate calls must bear the cost of terminating those calls. Our Group 2 Order of December 4, 2001, found Qwest generally compliant, but subject to required SGAT changes and favorable results regarding pricing, implementation, and related matters as shown by the ROC-OSS test, the TELRIC case, and other criteria. Wyoming Performance Results show billing accuracy and completeness at a 100% performance level in 11 of 12 months and 99.1% in the other month (where the established benchmark is 95%). The combination of ROC OSS test results, the PMA and commercial data allow us to sustain our decision in Group 2 and find that Qwest has satisfied this checklist item.

n. Resale: 47 U.S.C. § 271(c)(2)(B)(xiv) requires that "Telecommunications services are available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)." Qwest must offer other carriers all of its retail services at wholesale rates without unreasonable or discriminatory conditions or limitations so that other carriers may resell those services to an end user. In our Group 2 Order of December 4, 2001, we found Qwest compliant subject to ROC OSS testing and passing the ROC OSS test on resale issues identified there. Specific issues of concern were: [i] Inaccurate Billing of Resellers; [ii] Ordering and Other OSS Issues; and [iii] Merger-Related PIC Charges. These include Wyoming-specific aspects and final approval is subject generally to success in the TELRIC docket. Wyoming Performance Results show some observations and exceptions and disputed issues related to Resale provisioning. Some observations and exceptions were unsatisfied and closed/unresolved. The modified z scores and parity scores were generally acceptable. Wyoming commercial data for many PIDs was actually better than the analogous ROC OSS test results and findings. Maintenance and Repair PIDs generally show good performance by Qwest in many categories. The combination of ROC OSS test results, the PMA and commercial data allow us to determine that Qwest has satisfied this checklist item, especially in light of the Verizon New Jersey Order standards discussed above. This checklist item illustrates well the need for a continuing constructive role for the Commission in the ongoing development of a fair and open competitive local exchange market in Wyoming.

The Change Management Process

36. The CMP, Exhibit G to the SGAT, provides for changes and updates of Qwest's [i] Systems (OSS Interface) and [ii] Products and Process for competitive local exchange service markets. It provides an orderly method for Qwest and signatory CLECs to manage orderly changes and develop familiarity with them. The FCC has developed the following criteria for reviewing and analyzing CMP plans:

a. information relating to the change management process is clearly organized and readily accessible to competing carriers;

b. competing carriers had substantial input in the design and continued operation of the change management process;

c. the change management plan defines a procedure for the timely resolution of change management disputes;

d. the availability of a stable testing environment that mirrors production;

e. the efficacy of the documentation that Qwest makes available for the purpose of building an electronic gateway.

Additional CMP standards from the FCC include requirements that Qwest demonstrate a pattern of compliance with its CMP and that it has provided adequate technical assistance to CLECs in using Qwest's OSS testing environment, referred to as the Stand Alone Test Environment (SATE).

37. Ten CLECs have successfully completed testing utilizing Qwest's SATE. In the Wyoming Performance Results, PID PO-19 measures SATE performance by Qwest. The benchmark for this PID is 95%; and Qwest has achieved 94.5% or higher during the last seven months, posting scores for March 2002 at 97.1%, April 2002 at 99.7%, and May 2002 at 98%. CMP Redesign Team meetings have continued after the release of the ROC OSS Final Report on May 28, 2002. At the final Redesign Team meeting on June 17-18, 2002, the final disputed CMP priority list issues were resolved (AT&T has stated in Arizona and Washington proceedings that its priority list issues had been settled and that this would resolve its remaining CMP issues). Since the CMP belongs to the "living" documentation of interconnection and local service competition, meetings will continue indefinitely to provide CLECs with a forum to address issues and to act on Change Requests (CRs) submitted by parties in the routine operation of the CMP.

38. We now have the benefit of six months of experience with the core provisions of the CMP, and Qwest has achieved 99% overall compliance. The June 18, 2002, version of the CMP document filed with us includes all resolved issues from the last Redesign Team meeting and all details of the CMP. The combination of the ROC OSS test, the PMA, Qwest's commercial data and recent CMP revisions and updates show us that the Qwest CMP, as filed on June 18, 2002, provides a workable system generally compliant with the public interest.

39. The filed text of the CMP requires some correction and additions. Section 4.3 contains a typographical error which should be corrected (i.e., the first "is" should read "as"). It should be clear that the CMP, by itself or as a part of the SGAT, cannot be used to vary or contract away the Commission's regulatory jurisdiction. Therefore, we direct that a new sentence be added to the end of CMP Section 4.1, Regulatory Change: "No party or parties may use the procedures in this document to modify the terms of a regulatory or legal entity's mandate which constitutes a Regulatory Change." The CMP must not be construed as precluding any party from bringing issues to the Commission for resolution, and it must not be used to abrogate the regulatory oversight role in long term PID administration.

Wyoming-Specific Issues

40. At our deliberation of June 28, 2002, we addressed the issues brought to us by Contact Communications and the InTTec/Visionary Communications group of intervenors. Our specific decisions on these issues will be embodied in another written decision to be issued after this order. However, for our purposes here regarding Qwest's compliance demonstration, we believe that the Wyoming-specific needs of these Wyoming companies can be addressed successfully with the mechanisms and safeguards being put in place here. These smaller companies will have the power to bring matters to the Commission for resolution, and they will have the benefit of a mature and useful CMP. The SGAT, especially including the QPAP as required by the Commission, will assist them in Wyoming by assuring a fair opportunity to compete.

The Qwest Performance Assurance Plan

41. The QPAP is one of the most important public interest elements in the entire process of this case, even though it is not a specific statutory requirement. Performance assurance plans developed because, in practice, they are recognized by the Commission and the FCC as integral to upholding the public interest and to prevent "backsliding" by providing assurances going forward that the admirably high level of performance by Qwest in Wyoming will continue into the future. The FCC has consequently made the existence of an approved PAP a prerequisite for 271 applications. The QPAP, attachment K to the SGAT, is intended to fulfill the FCC's performance plan criteria, which are:

- Meaningful and significant incentive to comply with designated performance standards;
- Clearly articulated and predetermined measures and standards encompassing a range of carrier-to-carrier performance;
- Reasonable structure designed to detect and sanction poor performance when and if it occurs;
- A self executing mechanism that does not open the door unreasonably to litigation and appeal; and

- Reasonable assurance that the reported data are accurate.

Our First Order on Group 5A Issues of January 30, 2002, found that substantial revision of Qwest's proposed QPAP was required in the public interest. Thereafter, we reaffirmed our decisions on the QPAP in our March 27, 2002, Order Denying Petition for Reconsideration and Setting Public Hearing and Procedure. To date, Qwest has not filed a QPAP for our consideration which accurately or completely reflects the decisions of the Commission as expressed and reconfirmed continuously since January 30, 2002. The latest filing by Qwest of a "compromise" QPAP, a filing not directed by the Commission to be made, continued to offer language not in conformance with the Commission's direction. Specifically, this Qwest "compromise" filing identifies six issue major issue areas that it addresses:

a. A cap on Qwest's annual liability under the QPAP.
b. Placing limits on the escalation of Tier 1 payments.
c. The election of remedies and the ability to offset damages.
d. The elimination of the three-month Tier 2 payment trigger.
e. The six month review.
f. "Sticky duration" of QPAP payments.

Qwest asserts that it complies with the Commission's direction on the elimination of the Tier 2 payment trigger and this is accurate. However, this last offering by Qwest fails to incorporate language satisfactorily addressing the other requirements expressed by the Commission.

42. Regarding the concept of capping Qwest's annual liability under the QPAP, we have said that there should not, at the outset, be such a cap. The dynamics of Wyoming's telecommunications industry and its unique competitive conditions (including among the highest cost of serving and its small, relatively widely spaced markets) clearly show that the QPAP should not be capped at the outset. In our order of January 30, 2002, we stated that:

> "For example, if it appears later that competitive local exchange carriers are abusing Qwest under the QPAP or that limits should, *in the light of actual Wyoming experience*, be placed on Qwest's potential obligations, this can be done at that later time. Review should be periodic and the six month interval suffices, but parties should be able to come before the Commission at any time if a serious problem arises. At once, this answers the question of whether Qwest should have to endure unbearable burdens under the QPAP and the question posed by the Consumer Advocate Staff regarding how to plan for a competitive future with so many unknowns and a lack of a Qwest track record on the subject."

By doing this, we have offered less protection than an unjustifiable and unsupported *absolute* cap might furnish, but we have offered considerably more than a simple procedural cap might provide. Under the QPAP as ordered, Qwest could come before the Commission at any time to present a case for capping its liability. It would not have to wait for an arbitrary dollar amount to be reached. It would only have to show that the QPAP was not operating in the public interest, e.g., that it had become a tool for abuse. Qwest's latest language does not provide for the simple and direct remedy we believe should be in place in Wyoming.

43. Regarding the question of placing limits on the escalation of Tier 1 payments, this is another situation in which we decided that the more meaningful incentive to compliant behavior would be not to establish arbitrary limitations now. We left the door open to Qwest and

any CLEC to bring the subject back before the Commission for modification or limitation as experience dictates. The QPAP must function as a tool to promote fair competition in the local telecommunications service markets in Wyoming.

In the "compromise" QPAP filing, Qwest partially addressed our requirements regarding escalation, but sought to cap the escalation of payments with respect to three billing-related measures. This is clearly not compliant, but our saying so does not prejudge how the Commission would deal with post-implementation *request* by Qwest to cap its liabilities under these three billing measures. In its "compromise" filing, Qwest argues that these billing measures, if uncapped, would create "the potential for exceptionally harsh and unfair payment requirements." We will act to curb abuses by any party, but the abuses must be real and not speculative or theoretical. We do not believe that it is in Wyoming's public interest to create such an inflexible QPAP, and we do not believe that the mere potential for harm is sufficient. Any payment made under the QPAP could result, under the wrong circumstances, in an abusive outcome. Rather than single out a few measures for preemptive caps, we will remain open to discussing and implementing caps on *any* measure shown to be functioning abusively and against the public interest.

44. Regarding the election of remedies and the ability to offset damages, we stated in our January 30, 2002, Order that:

> "11. It is possible that litigation between Qwest and a local service competitor could arise if problems could not be otherwise resolved under the QPAP or the SGAT. The QPAP draft removes the ability of a competitor to go into court and sue Qwest for contract damages or damages that could be proven under a contractual theory of liability. It would force the competitor to elect the QPAP as a "liquidated damages" remedy. It would be a mistake to consider the QPAP or the SGAT in general as a simple contract; and it would be a further mistake to require simple precepts of general contract law to limit its effectiveness. The QPAP is a document based on the requirements of federal telecommunications law, and its formation is driven not by a mutual desire to engage in local exchange telecommunications service competition but by the legal requirement that Qwest's local markets be fairly opened to competition. Qwest's goal is not simply to open its local markets but to be allowed into the lucrative in-region interLATA originating long distance market now denied to it by law. Thus the analysis of this case and the QPAP has public policy and public interest dimensions beyond simple contract law. None of the parties to either the Wyoming or the multi-state proceeding could produce evidence showing that there could not be instances in which the QPAP might be an inadequate remedy for unfair, anticompetitive or monopolistic behavior by Qwest. We also do not believe that we, or any of the parties, can foretell the future with sufficient accuracy to say that the QPAP is now a perfect remedy and that it suffices in all cases. Therefore, we will not allow the QPAP to limit the ability of a competitor to go into court on *any* theory of liability or with regard to any element of damages. The avenues to recovery should be open for Qwest and its competitors. Even though QPAP payments should suffice to compensate CLECs, there may be instances in which poor performance by Qwest causes unusually high losses by competitive local exchange carriers. The QPAP and the SGAT should allow CLECs to recover these losses through court action if there is a valid cause of action."

We believe that the entities involved in an SGAT should be able to seek a remedy for a wrong done to it. It would be contrary to the public interest, in our opinion, to allow the QPAP to be considered as liquidated contract damages which provide an exclusive and limited remedy. At the same time, we believe that monies paid under the QPAP should be allowed to be proven by Qwest as offsets before a tribunal in which relief is sought. In the "compromise" QPAP, Qwest continues to mischaracterize QPAP payments as "liquidated damages." As discussed above, the

QPAP is not a simple contract; and the existence of QPAP payments is designed to encourage good performance rather than to function as simple contract damages. In the "compromise" QPAP, Qwest also misapplies the last two sentences of the quoted paragraph. The QPAP should acknowledge that CLECs may go to court to prove their damages if they believe that the QPAP does not adequately address a perceived wrong. We do not believe that there should be a threshold requirement in the QPAP that a CLEC demonstrate a viable cause of action through the dispute resolution process. This is an unnecessary burden. The availability of summary judgment in court is sufficient to weed out frivolous claims and causes of action. We stand by our original observations of January 30, 2002, that:

> "12. We agree with the FCC that the QPAP should be "a self executing mechanism that does not open the door unreasonably to litigation and appeal." This is one of the reasons for our conclusions on payments as stated above. However, we also do not want the QPAP to become simply a profit source for potential competitors. Double recovery, under the QPAP and in court, should not be allowed to happen. Therefore, Qwest should be able to offset against any ordered award any sum it proves to the tribunal to be a valid offset of QPAP payments directly related to the subject matter of the proceeding."

We also find it inconsistent that "compromise" section 13.6.1 could supposedly require a CLEC to forego remedies under properly promulgated Wyoming quality of service rules. Our rulemaking jurisdiction cannot be contracted away. The QPAP also requires at "compromise" section 13.6 that a CLEC forego any remedies not set forth in "compromise" sections 13.6.1, 13.6.2 and 13.7 before availing itself of the protections of the QPAP. Besides incorporating the objectionable preconditions discussed above, this language also effectively prevents a CLEC from bringing a matter to the Commission for resolution.

45. Regarding the six month review process, we find that Qwest has made an effort to comply with our January 30, 2002, order; and the proposed "compromise" sections 16.1 and 16.1.2 come close to providing for a simple six-month review process. Any CLEC or Qwest may request that the Commission conduct such a review and evaluation of the QPAP. In that regard, in our January 30, 2002, Order, we observed, at paragraph 13, that:

> "The Commission has only the public interest to look after and is not a partisan force in the process. We have also developed considerable familiarity and experience with the issues so ably presented by the parties to the Wyoming and multi-state Section 271 process. The better model for modification of the QPAP is a proceeding before the Commission which preserves the due process and other rights of the parties and retains the Commission's ability to act in the public interest regarding this document. Reviews of the plan should be made by the Commission in light of Wyoming-specific issues and the subjects which may be addressed should not be circumscribed. This will function as a protection for all parties. For example, if it appears later that competitive local exchange carriers are abusing Qwest under the QPAP or that limits should, *in the light of actual Wyoming experience*, be placed on Qwest's potential obligations, this can be done at that later time. Review should be periodic and the six month interval suffices, but parties should be able to come before the Commission at any time if a serious problem arises." [Emphasis original.]

The Commission made its continuing role in the process clear and made it clear that any entity may come to the Commission at any time if a serious problem arises, emphasizing that the QPAP is a "living" document. Therefore, the second sentence of "compromise" section 16.1, as proposed by Qwest should read: "The Commission may initiate a proceeding to review the QPAP at any time and to order changes to any provision of the QPAP, after notice and hearing in

accordance with the Wyoming Administrative Procedure Act." This simple and unequivocal statement is all that is needed.

46. Regarding the "sticky duration" of QPAP payments, we stated that the level of a payment should stay at the level to which it escalated (prior to cure of the nonconforming behavior by Qwest) because that would clearly identify the level at which compliance occurred. We found, in our January 30, 2002, Order that:

> "The actual reward for good behavior should be not having to make payments under the QPAP because Qwest's performance complies with it. The idea of encouraging good behavior and then lessening the payment for bad behavior as a reward for an interim period of good behavior is a perverse incentive. We therefore decide that escalated penalties should be "sticky." That is, once a payment has escalated to a level at which Qwest complies with a provision of the QPAP, that particular payment should remain at that level. Again, compliance should be rewarded and this is the better way to encourage this behavior. The QPAP should not lend itself to a "cost-benefit" analysis under which the price of noncompliance might be weighed and found by Qwest to be an acceptable cost of doing business."

Qwest's offered section 6.2.1 in the "compromise" QPAP does not attempt to conform to this decision of the Commission and provides for limited escalation and for de-escalation of payment levels. We remain convinced that the reward for good behavior should be not having to make a payment under the QPAP rather than having the level of penalty fall with respect to later repetition of the proscribed behavior. We note here that the difference of opinion expressed by Qwest in this situation is largely a theoretical matter in Wyoming. Qwest's performance has been improving constantly and is at a very respectably high level of quality. We cannot, however, find the offered language compliant with our clear and reiterated decision.

47. The QPAP ordered by the Commission is a proper public interest fit with the telecommunications market situation which actually exists in Wyoming. It is a simple, self-executing concept which seeks to encourage the fair opening of Qwest's Wyoming markets to local service competition in a state where small competitors and challenging economic circumstances are the rule. It is not convoluted and it does not rely on formulas and restrictions which may easily do damage to fair competition. The ordered QPAP is not without limits. It is subject to the limits of the public interest as experience helps all participants to understand the working of the QPAP and its impact in Wyoming in the future. Without our commitment to act to prevent abuse of any party by any party and to prevent QPAP "windfalls," the QPAP we have ordered could fail to serve the public interest, just as *any* PAP could fail if it were inflexible and written simply to serve the interest of a particular party.

48. We find that the QPAP, in the form finally suggested by Qwest, is in significant ways non-compliant with our orders, especially our order of January 30, 2002, herein, a copy of which is attached hereto. We cannot consider it sufficient to our public interest purposes in this case; and we do not believe that, in light of all of the facts and circumstances coming before the Commission in this proceeding concerning telecommunications in Wyoming, that it meets the FCC's criteria set forth, *supra*.

The SGAT and Its General Terms and Conditions

49. As described at 47 U.S.C. § 252(f), Qwest may file an SGAT which it offers in Wyoming to comply with the requirements of Section 251 and the regulations thereunder and the applicable standards under Section 252 of the federal Act. The SGAT affects all of the checklist items found at 47 U.S.C. § 271(c)(2)(B); and the general terms and conditions of the SGAT affect all of the operational aspects of the SGAT itself. Taken as a whole, the document itself is an essential part of the demonstration that Qwest has "irreversibly," fully and fairly opened its Wyoming local exchange service markets to competition and that it complies with the competitive checklist. It serves to identify Qwest's actual interconnection policies with regard to all aspects of the local market. In our Group 5 Order of June 19, 2002, we found that Qwest's general SGAT terms and conditions requirements are satisfactory and should be approved.

50. The successful conclusion of the TELRIC pricing docket will ensure that Qwest will not use pricing as a barrier to competitive local exchange service. Our review of the entire SGAT, discussed, *supra*, shows that it has been updated by Qwest, incorporating changes required by our Paper Workshop Order and our orders on Groups 2 through 5. It has not yet been entirely updated, with some additional changes being required, for example, to produce a compliant QPAP and to make other, relatively minor, changes in the document and its attachments. Upon the filing of those required changes, we could recommend that the SGAT is compliant and contributes to a favorable recommendation to the FCC in this case.

General Oversight

51. This case arises in a dynamic telecommunications environment in which markets, customer needs, technology and business organizations are characterized by constant innovation and change. The SGAT, with its attached QPAP and other exhibits, constitutes a "living" document having sufficient flexibility to function efficiently in this environment. The federal Act recognizes that a partnership of federal and state regulatory agencies is needed to ensure that competitive markets are allowed to develop fairly. This allows adequate state and federal resources to be engaged in applying local and national expertise to the local and national aspects of the task; and the job is not done. Just as the QPAP exists to bring a measure of assurance of good behavior in the future, the role of the state and federal regulators continues into the future to ensure that the analogous public interest mandates of the federal Act and the Wyoming Telecommunications Act of 1995 are fulfilled. Consistent with this, we have observed above that the SGAT and its attachments must not purport to contract away the Commission's continuing role in the process. Some aspects of the SGAT, including the QPAP, require ongoing engagement and oversight to make the processes workable, efficient and responsive to the public interest. Long term PID administration processes, including cooperative regional efforts, must also be developed and utilized. We will therefore continue to be a resource for the hearing and resolution of disputes among companies and will continue to be actively engaged in the ongoing process of change to ensure that the public interest of Wyoming's subscribers is served. This must be unambiguously reflected in the documentation generated in the Section 271 process in Wyoming.

Conclusion

52. With the directives and reservations noted above, and subject to the filing with the Commission of conforming documentation, we find that Qwest has met the requirements for satisfying the competitive checklist found at 47 U.S.C. § 271(c)(2)(B); that it has met the separate affiliate requirements of 47 U.S.C. § 272; and that the authorization requested by Qwest is consistent with the public interest, convenience and necessity as stated in 47 U.S.C. § 271(d)(3)(C).

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Our previous orders entered in the above-captioned case are hereby expressly reconfirmed.

2. Qwest shall file with the Commission, for review and approval, documentation conforming to the requirements discussed above in the body of this order. The Commission will thereupon review the filed documentation and make its recommendation to the Federal Communications Commission with respect to this case.

3. We will continue to hear and resolve disputes among companies competing in Wyoming and will continue to be actively engaged, through periodic reviews, upon application of parties, and otherwise, in the ongoing process of change to ensure that Qwest maintains its admirably high level of performance in Wyoming, that Wyoming's local telecommunications markets remain fairly open to competition, and that the public interest of Wyoming's telecommunications subscribers is served.

4. This order is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming, on July 3, 2002.

PUBLIC SERVICE COMMISSION OF WYOMING

/s/ Steve Ellenbecker
STEVE ELLENBECKER, Chairman

/s/ Kristin H. Lee
KRISTIN H. LEE, Commissioner

(SEAL)
Attest:

/s/ Stephen G., Oxley
STEPHEN G. OXLEY, Secretary and Chief Counsel

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION OF QWEST CORPORATION REGARDING RELIEF UNDER SECTION 271 OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996, WYOMING'S PARTICIPATION IN A MULTI-STATE SECTION 271 PROCESS, AND APPROVAL OF ITS STATEMENT OF GENERALLY AVAILABLE TERMS	Docket No. 70000-TA-00-599 (Record No. 5924)

ORDER ON SGAT COMPLIANCE
(Issued July 9, 2002)

This matter is before the Wyoming Public Service Commission (Commission) for additional consideration of the degree to which Qwest Corporation (Qwest) has successfully demonstrated compliance with 47 U.S.C. § 271 and related provisions of the federal Act to obtain a favorable recommendation from the Commission to the Federal Communications Commission (FCC) on whether or not Qwest should be allowed to offer originating in-region interLATA services in Wyoming. Specifically, we must consider [i] whether Qwest has met the requirements for satisfying the competitive checklist at 47 U.S.C. § 271(c)(2)(b); [ii] whether Qwest has, with Qwest Communications Corporation (QCC) met the separate affiliate requirements of 47 U.S.C. § 272; and [iii] whether the requested authorization is consistent with the public interest, convenience and necessity as stated in 47 U.S.C. § 271(d)(3)(C). Specifically, this order deals with the Fifth and Sixth Revisions to Qwest's Statement of Generally Available Terms (SGAT), with exhibits, and their conformance with Commission directives on our orders of January 30, 2002, and July 3, 2002. The Commission, having reviewed the evidence produced in the above-captioned case, including the multi-state process, having heard the arguments of parties in open hearing, having reviewed applicable telecommunications utility law and its files and prior orders concerning the above-captioned case and concerning the participants herein, and being otherwise fully advised in the premises, HEREBY FINDS AND CONCLUDES:

Procedural Matters

1. On July 1 and July 8, 2002, respectively, Qwest filed with the Commission its Fifth and Sixth Revisions to its SGAT, responding to issues decided by the Commission, most particularly in its Order on Consideration of General Compliance, issued on July 3, 2002, wherein we ordered that: "Qwest shall file with the Commission, for review and approval, documentation conforming to the

requirements discussed above in the body of this order." With the July 8, 2002, filing Qwest had placed before the Commission a complete SGAT with all exhibits, including those missing from the earlier July 1, 2002 filing, and with textual additions and changes offered by Qwest.

2. Pursuant to due notice, the matter was heard by the Commission at its regular open meeting of July 9, 2002. Qwest and the Commission staff presented their views on the documentation before us, and we directed the preparation of this order.

The SGAT Text

3. In the July 1, 2002, Revision, Qwest voluntarily modified section 6.2.2.5 of the SGAT to provide that inside wire maintenance plans will be "available for resale at the Qwest retail rate with no wholesale discount." These inside wire maintenance plans are not telecommunications services which Qwest is under an obligation to offer for resale at a wholesale discount under 47 U.S.C. § 251(c)(4)(A). We approve this as a positive benefit for CLECs and their customers with respect to a service that Qwest is under no obligation to provide for resale.

SGAT Exhibit A: TELRIC Prices and Wholesale Discounts for Unbundled Network Elements, Interconnection and Collocation

4. On June 28, 2002, the Commission approved the stipulated TELRIC rates as set forth in Qwest's compliance filing related to unbundled network elements, collocation and interconnection in Docket No. 70000-TA-01-700. The TELRIC compliance filing is Exhibit A to Qwest's SGAT. Since that time, Qwest has filed a revised version of Exhibit A containing five new benchmark recurring rates as follows:

Description	Old Rates (7/1/02)	New Rates (7/10/02)
7.6.1 End Office Call Termination: per minute of use	$0.002447	$0.001854
7.6.2 Tandem Switched Transport: Tandem Switching, per minute of use	$0.002116	$0.000690
9.8.1 Shared Transport: per minute of use - TELRIC based rate	$0.0017920	$0.001110
9.10.4 Local Tandem Switching: per minute of use	$0.003225	$0.000690
9.11.7 Local Switching: Local Usage: per minute of use	$0.003685	$0.001854

Qwest has asked that these new benchmark rates be approved and that they become effective on July 10, 2002. They have been voluntarily lowered by Qwest, to the benefit of interconnecting CLECs; and they have been proposed by Qwest to

remove any doubt that its SGAT rates comply fully with the TELRIC pricing mandate of the federal Telecommunications Act of 1996.

5. The existence of a "true up" mechanism with respect to the prices in Exhibit A is acknowledged in footnotes to the July 1, 2002, version of that Exhibit. The "true up" will be dealt with by the Commission in its final order in Docket No. 70000-TA-01-700 -- the TELRIC pricing case.

6. Qwest has asked that the July 1, 2002, version of Exhibit A prices be allowed to go into effect on July 10, 2002, to facilitate its application to the FCC for relief under Section 271 of the federal Act. We find that the prices, including the five voluntary unilateral reductions set forth above, are compliant with our orders in this case and the TELRIC case discussed above. We conclude that these prices should be allowed to become effective on July 10, 2002, as requested.

SGAT Exhibit B: Performance Indicator Definitions (PIDs)

7. These PIDs form the basis by which Qwest will report its service performance results (Performance Measures) associated with the services and products it provides to CLECs in Wyoming. With the July 8, 2002, Sixth Revision of the Wyoming SGAT, Qwest filed version 5.0 of its PIDs for use therewith. This version contains lately developed PIDs from the end of the ROC OSS testing process and otherwise contains and accurately sets forth the PIDs developed in the ROC OSS testing process and should be approved. Version 5.0 is up to date and should be approved, remembering that this a "living" document reflective of a dynamic industry. Therefore, we reiterate our commitment to remaining engaged in long term PID administration in Wyoming and in a multi-state environment.

SGAT Exhibit G: The Change Management Process (CMP)

8. In our July 3, 2002, Order in this case, we approved the CMP, Exhibit G to the SGAT, as providing an orderly method for Qwest and CLECs to manage changes and updates of Qwest's [i] Systems (OSS Interface) and [ii] Products and Process for competitive local exchange service markets. In that order, at paragraph 39, we directed two changes to the CMP.

a. We directed correction of what appeared to be a typographical error in Section 4.3. Qwest explained thereafter that the wording of this section, albeit without the necessary clarifying punctuation, is correct, if awkward. We accept Qwest's explanation and note the consensus nature of the CMP. We will therefore not require a clarifying change at this time, but direct Qwest to address the subject in the regular course of the operation of the process.

b. At paragraph 39, we also stated that:

> "It should be clear that the CMP, by itself or as a part of the SGAT, cannot be used to vary or contract away the Commission's regulatory jurisdiction. Therefore, we direct that a new sentence be added to the end of CMP Section 4.1, Regulatory Change: "No party or parties may use the procedures in this document to modify the terms of a regulatory or legal entity's mandate which constitutes a Regulatory Change." The CMP must not be construed as precluding any party from bringing issues to the Commission for resolution, and it must not be used to abrogate the regulatory oversight role in long term PID administration."

In response to this directive, Qwest, in its July 8, 2002, Revision filed a new SGAT Section 12.2.6.4 which states:

> "No Party or parties may use the procedures in the CMP Document (Exhibit G) to modify the terms of a regulatory or legal entity's mandate which constitutes a Regulatory Change."

Qwest explained that, because the CMP was a consensus document produced in a 14-state workshop, it did not want to make a unilateral change in the Wyoming CMP, but preferred to incorporate the language into the SGAT itself. Qwest's explanation is adequate; and we accept this version of the change as compliant with our order of July 3, 2002.

SGAT Exhibit K: The Qwest Performance Assurance Plan (QPAP)

9. On July 8, 2002, and with its Sixth Revision to the SGAT, Qwest filed a revised QPAP which responds, but only in part, to the Commission's July 3, 2002, and January 30, 2002, orders.

a. QPAP Section 12: Cap on Tier 1 and Tier 2 Payments. Despite our orders to the contrary, Qwest again proposes a complex and administratively burdensome cap on its liability under the QPAP. It further compounds the problem by offering new language which purports to do away with the Commission's jurisdiction to review this complex cap except in certain limited circumstances acceptable to Qwest (see, QPAP Section 12.2). Even then, the Commission would only be allowed to open a proceeding to "request" that Qwest explain its non-conforming performance in extreme circumstances, after Qwest reaches the cap for two consecutive years or when it pays out a third of the cap "in two consecutive months." This clearly weakens the QPAP and diminishes the ability of the Commission to act in the public interest in telecommunications matters under the federal Act and under the Wyoming Telecommunications Act of 1995. It diminishes the ability of the Commission to act in efficient partnership with federal regulators under the federal Act.

We note that Qwest has not even made an attempt to comply with our directives in the July 3, 2002, and January 30, 2002, orders regarding the "sticky duration" of QPAP payments. Section 6.2 of the QPAP remains unacceptable for the reasons stated in those orders.

b. Section 13.6: Limitation of remedies. Qwest continues to assert that the QPAP should be allowed to abrogate Commission authority to promulgate quality of service rules and enforce them. This was unacceptable and remains so. Section 13.6.2 again offers a narrowly available and complicated process to delay or block CLEC access to the courts by forcing them to pass a QPAP test and getting "permission" to go to federal court. This remains unacceptable.

c. Section 16.1: Six-Month Reviews. Qwest's newly offered language includes some of the changes directed in our July 3, 2002, order designed to clarify the Commission's retention of a public interest oversight role over the QPAP, but it remains unacceptable because of Qwest's persistent inclusion of the phrase "consistent with any independent authority under law" in the description of when the Commission may order changes in the QPAP. Qwest thereby seeks again to insulate itself going forward from scrutiny of the QPAP. If the goal of a QPAP is to be administered with a minimum of delay and litigation, Qwest's suggested language does not serve this end but merely creates an opportunity for additional delay and increased expense. Remembering that Wyoming competitors are generally small and are dealing with relatively small markets, this much delay of the correction under the QPAP of an abuse by Qwest might easily suffice to silence the would-be competitor and end the matter without any consideration of the public interest. In our July 3, 2002, order, we directed a simple and unequivocal statement of the Commission's continuing role in the process clarifying that any entity may come to the Commission for resolution at any time if a serious problem arises. This was not done and this section is unacceptable.

Our conclusion on this point is reinforced by the last sentence of Section 16.1 which states that: "Any changes made in the six-month review pursuant to this section shall apply to and modify this agreement between Qwest and CLEC." This implies that changes made at other times pursuant to a Commission mandate might *not* modify "this agreement." Again, Qwest includes limitations and ambiguities which favor it and which increase delay and expense to other parties. This goes directly against the public interest as set forth in the federal Act and the Wyoming Telecommunications Act of 1995.

d. In the July 8, 2002, version of the QPAP at Section 6.1, concerning Tier 1 payments to CLECs, and at Section 6.2, Determination of the Amount of Payment, Qwest offers clarifying language regarding parity and benchmark thresholds. We have reviewed the offered language and conclude that it is indeed helpful and clarifying.

e. Section 13.1 of the QPAP states that "The PAP shall not become available in the State unless and until Qwest receives effective Section 271 authority from the FCC for that State." Given the significant deficiencies in

Qwest's proposed Wyoming QPAP, this is a positive provision. It will provide the FCC with time to review the Wyoming-specific reasons for our directives regarding the QPAP found in our orders of January 30, 2002, and July 3, 2002, and how those directives, coupled with the commitment of the Commission to remain constructively and efficiently engaged in the ongoing development of competitive local and interexchange telecommunications markets in Wyoming, serve the public interest.

Conclusion

10. We conclude that the latest versions of the SGAT and all the exhibits thereto, except for Exhibit K, meet the requirements of the federal Telecommunications Act of 1996. It is consistent with the public interest, convenience and necessity that the SGAT and all the exhibits thereto, except for exhibit K should become effective, as requested, on July 10, 2002. We leave to the FCC the decision of the form the Wyoming QPAP should take.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The latest versions of the SGAT and all the exhibits thereto, except for Exhibit K, all as filed herein by Qwest, are hereby approved, with an effective date of July 10, 2002.

2. This order is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming, on July 9, 2002.

PUBLIC SERVICE COMMISSION OF WYOMING

/s/ Steve Ellenbecker
STEVE ELLENBECKER, Chairman

/s/ Steve Furtney
(SEAL) STEVE FURTNEY, Deputy Chair

Attest:

/s/ Stephen G., Oxley
STEPHEN G. OXLEY, Secretary and Chief Counsel